

LAW AND SOCIAL INNOVATION: LAWYERING IN THE
CONCEPTUAL AGE

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ABSTRACT

A range of forces are arrayed against the institutions of the American legal profession and stand to undermine their foundations and challenge their continued existence, at least in their current form. These include technological innovation, outsourcing, automation, globalization, and rising economic inequality. These threats are emanating from both domestic and transnational sources and require the legal profession in general and law schools in particular to respond to the new reality of the contemporary age and adapt to it, without losing sight of the core social justice principles upon which the profession should be based: access to justice, protection of civil and political rights, and preservation of the rule of law. The threats to the legal profession and law schools require an assessment of what lawyers do best and how they can continue to fill a critical role in society. At the heart of lawyering is problem solving, and for lawyers, and law schools, ensuring that the legal profession can continue to deliver strategic, meaningful, and effective problem-solving services in the twenty-first century will help preserve and shape the role of the profession and law schools well into the future.

To address the problems the legal profession itself confronts, it must be able to address the challenges the world-at-large faces, which, in many respects, mirror those of the legal profession: e.g., rising economic inequality, climate change, rapid urbanization and de-industrialization, threats to the rule of law, and social change wrought by advances in technology that are creating an interconnected world. What are the problem-solving skills that the legal profession must possess, and that law schools must instill in

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their students, given the forces that are impacting the practice of law and broader society? Ten years ago, author Daniel Pink published the prescient *A Whole New Mind: Why Right-Brainers Will Rule the Future*. In it, Pink explores how automation and the ability to outsource a great deal of work traditionally performed by knowledge workers pose challenges for individuals in many industries to remain relevant and economically viable in the contemporary age. While these forces are affecting many different sectors, the legal profession, and the law schools that educate its members, are feeling these threats acutely. Pink offers strategies for thriving in this environment, arguing that this new era, what he calls the “Conceptual Age,” requires a new set of skills and aptitudes that he posits are those that tend to be dominated by the right hemisphere of the brain, such as the ability to think conceptually and metaphorically, to empathize with others, to see and recognize patterns, and to appreciate and communicate compelling narratives. These skills, which he calls the “aptitudes” of the Conceptual Age, include design, empathy, story, symphony, play, and meaning. Such skills are necessary to thrive in the contemporary environment and deliver value to communities and markets.

This article explores how these aptitudes can be taught in a law school setting, focusing on one problem-solving course through which students engage in real-world problem solving in ways that invoke Pink’s aptitudes of the Conceptual Age. The problems the students in the course face include urban blight, economic inequality, and the ongoing effects of de-industrialization and the recent financial crisis on cities. This article explores the potential, exhibited in this class, for interdisciplinary collaboration and “town-gown” cooperation to engage in open innovation and community problem solving to address the needs of post-industrial cities facing compounding economic, social, and even existential threats. Following this examination, it also explores the implications of teaching these aptitudes in a law school setting and the role they may play in both the legal profession in general and law schools in particular.

INTRODUCTION

The legal profession in general and law schools in particular face significant threats to their viability.¹ A range of forces are arrayed

¹ See, e.g., Jon M. Garon, *Legal Education in Disruption: The Headwinds and Tailwinds of Technology*, 45 CONN. L. REV. 1165, 1213 (2013) (“If law schools choose to cling to existing business models, many of them will follow safe corporations . . . into irrelevance.”).

against the institutions of the legal profession that stand to undermine their foundations and challenge their continued existence, at least in their current form. These threats to the American legal profession, which include technological innovation, automation, globalization, and the high cost of legal services,² are emanating from both domestic and transnational sources, and require the legal profession and law schools to respond to the new reality of the contemporary age and adapt to it, without losing sight of the core social justice principles upon which the profession should be based: access to justice, protection of civil and political rights, and preservation of the rule of law.³ The threats to the legal profession and law schools require an assessment of what lawyers do best and how they can continue to fill a critical role in society.⁴ At the heart of lawyering is problem solving,⁵ and for lawyers, and law schools, ensuring that they can continue to deliver strategic, meaningful, and effective problem-solving services in the twenty-first century will help determine the role of the legal profession and law schools well into the future.

In some ways, the threats to the legal profession reflect the problems that society faces writ large, and it is these problems, if lawyers are to remain relevant to that society, that lawyers must stand ready to attempt to address, and maybe even solve. Just as the

² See, e.g., Wilson Pasley, *The Revival of "Privileges or Immunities" and the Controversy Over State Bar Admission Requirements: The Makings of a Future Constitutional Dilemma?*, 11 WM. & MARY BILL RTS. J. 1239, 1245 (2003) ("Beginning in the 1870s . . . the legal profession responded to perceived threats and changing economic conditions."); T. F. Bathurst, *Advocate v. Rumpole: Who Will Survive? An Analysis of Advocates' Ongoing Relevance in the Age of Technology*, 2015 ABR LEXIS 35, 4–5 (2015) ("If true, [the idea that technology already is, and will increasingly be able to, actually replace the role of lawyers] . . . would mean the legal profession in general[] is already doomed to extinction."); see also Martin E.P. Seligman et al., *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33, 38 (2001) ("[L]awyer unhappiness can lead to serious health and social problems that pose a threat to the legal profession.").

³ See, e.g., *Kommavongsa v. Haskell*, 67 P.3d 1068, 1084 (Wash. 2003) (Ireland, J., dissenting) ("To support its public policy concern, the majority invokes the legal profession's sacred cow—access to justice."); see also *In re Krogh*, 536 P.2d 578, 590 (Wash. 1975) (Finley, J., concurring) (noting the importance of the legal profession protecting the constitutional, statutory, and other historical civil rights of individual citizens); Laurel S. Terry et al., *Globalization and the Legal Profession: Adopting Regulatory Objectives for the Legal Profession*, 80 FORDHAM L. REV. 2685, 2742 (2012) ("We value an independent and strong legal profession so that lawyers can take their proper place in preserving the rule of law in a society.").

⁴ See, e.g., *Hagen v. Siouxland Obstetrics & Gynecology, P.C.*, 964 F. Supp. 2d 951, 966 (N.D. Iowa 2013) ("[L]awyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system . . ." (citing *Thompto v. Coborn's Inc.*, 871 F. Supp. 1097, 1119 (N.D. Iowa 1994))).

⁵ See, e.g., Larry O. Natt Gantt, II, *The Pedagogy of Problem Solving: Applying Cognitive Science to Teaching Legal Problem Solving*, 45 CREIGHTON L. REV. 699, 700 (2012) ("[T]hinking like a lawyer has always involved, at its core, problem solving . . .").

legal profession is facing threats from technological innovation and globalization, the broader society faces dramatic change, brought on, in part, by these forces. This change is manifesting itself in many forms: climate disruption, economic displacement, rapid urbanization, de-industrialization of many communities in the United States, rising economic inequality (a cause and consequence of many of these problems), and threats to the rule of law (also a by-product of the unease many feel as a result of some of these forces).⁶

To attempt to address some of these problems, and to remain relevant to the issues faced by society on a broader scale, what are the problem-solving skills that the legal profession must possess and that law schools must instill in their students given the trends that are impacting the practice of law and society at large? This article is an attempt to identify these skills and explore how they can be taught in an interdisciplinary law school class. This class offers students the opportunity to collaborate with local, urban leaders through open innovation and a “town-gown” collaboration to address the causes and consequences of some of the forces identified above, including de-industrialization, economic inequality, and the most recent financial crisis.

But what are the skills lawyers and other professionals need to address the challenges the legal profession and society at large face? In his 2005 book, *A Whole New Mind: Why Right-Brainers Will Rule the Future*, author Daniel Pink posits that the future of workers in most Western economies will involve doing work that others cannot do cheaper, faster, or better.⁷ He believes that three forces—which he describes as “Asia,” “abundance,” and “automation”—will impact the global economy considerably in the present and the coming years, meaning that in order to find meaningful and rewarding work, both financially and personally, one has to have a range of what he calls “aptitudes” that are needed in the new era, where machines and computers, cheap labor overseas, and an incredible array of consumer

⁶ Several recent works identify and attempt to consider solutions to some of these problems. See, e.g., ERIK BRYNJOLFSSON & ANDREW MCAFEE, *THE SECOND MACHINE AGE: WORK, PROGRESS AND PROSPERITY IN A TIME OF BRILLIANT TECHNOLOGIES* 204–45 (2014) (describing short- and long-term solutions for dealing with the technological change the authors predict for the immediate future); THOMAS FRIEDMAN, *THANK YOU FOR BEING LATE: AN OPTIMIST’S GUIDE TO THRIVING IN THE AGE OF ACCELERATIONS* 19–184 (2016) (describing the forces of computing power, the Internet, globalization, and climate change and their impact on the future); ELIZABETH KOLBERT, *THE SIXTH EXTINCTION: AN UNNATURAL HISTORY* 92–110 (2014) (describing the impact of human behavior and technological change on the environment and climate).

⁷ See DANIEL H. PINK, *A WHOLE NEW MIND: WHY RIGHT-BRAINERS WILL RULE THE FUTURE* 46–47, 51 (2006).

goods and services are available in ever-increasing supply.⁸ There is no question that, in addition to having a broad impact on society at large, some of the forces Pink identifies have also impacted the legal profession in the recent past, continue to impact it to this day, and will impact it well into the future.⁹

This article explores the extent to which lawyers can embrace the aptitudes Pink describes—“[d]esign, story, symphony, empathy, play, and meaning”¹⁰—to ensure that such lawyers are not just employed but relevant to the contemporary era, what he calls the “Conceptual Age.”¹¹ It does so by describing my efforts to co-teach an interdisciplinary class at Albany Law School entitled *Law & Social Innovation: Creative Problem Solving*.¹² In that class, students have paired up with local governments in an attempt to apply Pink’s six aptitudes¹³ to address some of the thorniest issues that cities face today: from urban blight and developing green building codes,¹⁴ to housing survivors of intimate partner violence,¹⁵ and finding ways to make it easier for food trucks to operate within city limits.¹⁶ Through these problem-solving projects, students have attempted to incorporate Pink’s thinking as it relates to lawyering in this new, Conceptual Age, with some degree of success. This article is an attempt to measure that success and learn how to incorporate any lessons learned into the ways in which, first, the legal profession engages with the wider world to undertake creative problem solving and, second, law schools can prepare students for the practice of law in the contemporary era and beyond.

In an effort to accomplish these goals, this article proceeds as follows. Part I provides a brief overview of the traditional role of the legal profession today, identifying problem solving as the core lawyer’s function. It then identifies some of the threats to the legal

⁸ See *id.* at 2, 3–4.

⁹ See, e.g., E. Spencer Ghazey-Bates, *The Affordable Care Act and the Continued Commoditization of Elder Law*, 11 NAT’L ACAD. ELDER L. ATT’YS J. 35, 38–39 (2015).

¹⁰ PINK, *supra* note 7, at 247.

¹¹ See *id.* at 3–4.

¹² See Ray Brescia, Syllabus, *Law and Social Innovation: Creative Problem Solving* 1 (Spring 2016) (on file with author).

¹³ See *id.* at 3.

¹⁴ See ELIZABETH BEARESE ET AL., ALBANY LAW SCH. & UNIV. OF ALBANY, FIGHTING BLIGHT IN ALBANY AND SCHENECTADY: A REPORT AND POLICY CONSIDERATIONS 6, 31 (2016), <http://www.albany.edu/albanylaw/assets/Urban-Blight-Report-9-12-16-final.pdf>.

¹⁵ See *What We Do*, CRIME VICTIM & SEXUAL VIOLENCE CTR., ALB. COUNTY, <http://www.albanycounty.com/Government/Departments/CrimeVictimandSexualViolenceCenter/WhatWeDo.aspx> (last visited Nov. 23, 2016).

¹⁶ See *New York’s Capital District Food Trucks*, INST. FOR JUST., <http://ij.org/action-post/ny-s-capital-district-food-trucks/> (last visited Nov. 23, 2016).

profession, which include globalization, technological innovation, outsourcing, and automation. In Part II, I will use Dan Pink's *A Whole New Mind* as a launching point from which to assess these threats and begin to explore whether the forces Pink identifies are relevant to a discussion of the future of the legal profession and whether the skills he argues are necessary for thriving in the current environment are useful in the contemporary and future practice of law. In Part III I will take the reader through a description of my class, *Law and Social Innovation*, as a way to explore the ways in which this class attempts to prepare students for the practice of law in the contemporary era and beyond by placing them in situations in which they can partner with local leaders to assist urban communities to address some of the thorniest problems they must address to survive and thrive. Applying the lessons learned from teaching this class, Part IV engages in an inquiry into the extent to which those lessons are applicable to the legal profession in general and Part V concludes the piece with an attempt to explore their relevance to legal education in particular.

I. LAWYERS AS PROBLEM SOLVERS

A. *What Lawyers Do*

Any assessment of the role of lawyers, the legal profession, and law schools in the twenty-first century must assess what is at the core of what lawyers do. Simply put, in the words of Professor Gerald Lopez: "Lawyering means problem-solving."¹⁷ Professor Carrie Menkel-Meadow describes a lawyer as a:

[P]rofessional with formal legal training who employs law, as well as other relevant disciplines, to solve human problems and disputes, plan transactions, prepare legal instruments and regulations, and who facilitates and engages in processes designed to accomplish compliance with [the] law and the pursuit of justice as members of society seek to accomplish legitimate aims of individual and social life.¹⁸

Lawyers are routinely in the "problem space": figuring out solutions, or, at times, trying to make situations more complex or difficult in order to gain an advantage for a client.¹⁹ As professor

¹⁷ Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1, 2 (1984).

¹⁸ Carrie Menkel-Meadow, *The Lawyer as Problem Solver and Third-Party Neutral: Creativity and Non-Partisanship in Lawyering*, 72 TEMP. L. REV. 785, 793-94 (1999).

¹⁹ See Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the*

Gary Blasi explains: “At bottom, lawyering entails solving (or making worse) problems of clients and others, under conditions of extraordinary complexity and uncertainty, in a virtually infinite range of settings.”²⁰ In 1992, the American Bar Association’s report on the state of legal education and the legal profession identified problem solving, together with legal analysis, as the two “conceptual foundations for virtually all aspects of legal practice.”²¹

When engaging in problem solving, lawyers bring both technical legal skills, as well as broader talents, like the ability to understand the political or economic constraints under which the client or an opposing party is operating.²² As professors Paul Brest and Linda Hamilton Krieger explain about legal problem solving: “Solutions are often constrained or facilitated by the law, but finding the best solution—a solution that addresses all of the client’s concerns—usually requires more than technical legal skill.”²³ Lawyers thus solve client problems that have a legal component to them, taking into account a range of interests and needs, in the pursuit of solutions that address those needs.²⁴ In a “law-thick” world, the lawyer’s role should have some prominence, given the extent to which societal and individual problems tend to have a legal component.²⁵

Given the rapid pace of evolutionary change brought on by technological advances, globalization, rapid urbanization, and climate change, as well as the displacement and economic inequality caused by these forces, the problems faced by society at large are problems lawyers should attempt to address if they are to remain relevant to the needs of the broader community. But does the legal profession itself face its own threats? It is to that question that I turn next.

Functions of Theory, 45 J. LEGAL EDUC. 313, 331 (1995).

²⁰ *Id.* at 317.

²¹ TASK FORCE ON LAW SCHS. AND THE PROFESSION: NARROWING THE GAP, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 135 (1992) [hereinafter MACCRATE REPORT].

²² See Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, 58 LAW & CONTEMP. PROBS. 5, 8 (1995).

²³ Paul Brest & Linda Hamilton Krieger, *Lawyers as Problem Solvers*, 72 TEMP. L. REV. 811, 811 (1999).

²⁴ See, e.g., Brest, *supra* note 22, at 8.

²⁵ See Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice through the (Un)Corporate Practice of Law*, 38 INT’L REV. L. & ECON. 43, 43 (2014).

B. The Threats to What Lawyers Do

Many of the same forces threatening society—globalization, technological change, economic inequality—are also impacting the continued viability of the legal profession in the United States. There are at least five forces driving the threats to the American legal profession. Technology is the first.²⁶ The Internet, machine learning, and digitization are driving fierce competition to the core business of many lawyers,²⁷ as new models of delivering services that look a lot like legal services are making some form of legal assistance less expensive and more accessible than traditional legal services.²⁸ Companies like LegalZoom® and Rocket Lawyer²⁹ are offering services at a fraction of the cost of customized, “bespoke” legal services, threatening the bottom line of many within the legal profession.³⁰ In addition, globalization and automation are permitting the offshoring of services traditionally performed by lawyers, like document review, to lawyers in other countries. And there are other reasons why consumers are turning to such technology-enabled and offshore outlets,³¹ and these are a function of the manner in which legal services are delivered in the U.S. at present. A third, and probably the most significant threat, is the high cost of legal services.³² A product of not just the high cost of services, but also rising economic inequality, many if not most American consumers are simply priced out of access to legal services, which results in eighty percent of low-income Americans and fifty percent of middle-income Americans facing their legal problems without a lawyer.³³ A fourth threat is the difficulty many clients have in finding a lawyer to assist them, which is partly a function of cost, but also partly a function of lawyers not making their services as accessible

²⁶ See, e.g., RICHARD SUSSKIND, *TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* 10 (2013).

²⁷ See *id.* at 13.

²⁸ See *id.* at 43–44.

²⁹ See Benjamin H. Barton, *The Legal Profession’s Monopoly on the Practice of Law: The Lawyer’s Monopoly—What Goes and What Stays*, 82 *FORDHAM L. REV.* 3067, 3072–73 (2014).

³⁰ See SUSSKIND, *supra* note 26, at 91.

³¹ See, e.g., Barton, *supra* note 29, at 3072–73.

³² See, e.g., Hadfield, *supra* note 25, at 48.

³³ See, e.g., LEGAL SERVS. CORP., *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 3 (2009) (synthesizing recent access to justice research to show that one in five low-income Americans faced their legal problems without a lawyer); see also Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 *J. LEGAL EDUC.* 531, 531 (2013) (“[M]ore than four-fifths of the individual legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.”).

as possible.³⁴ The final threat may be the fact that some percentage of American consumers may not be aware that they have a legal problem or a problem that a lawyer can help them resolve.³⁵

These threats suggest that the legal profession is in the midst of a disruption, a fundamental change in the manner in which the profession operates by virtue of the fact that the legal services market is both a market in which many potential consumers cannot afford the services as they are currently being delivered by incumbent service providers, and innovative companies are beginning to deliver services that are more accessible and affordable. Harvard Business School's Clayton Christensen calls this phenomenon the "innovator's dilemma."³⁶

The innovator's dilemma, as Christensen describes it, occurs when incumbent providers in a market expend resources to produce goods or services but the goods and services those incumbents produce tend to offer more features than what the typical consumer wants or needs to purchase.³⁷ Eventually, innovators enter the low end of the market offering competing goods and services that supply just what the consumers in that segment of the market actually want.³⁸ Incumbent providers ignore those insurgent companies, ceding the lower end of the market, pursuing a "Red Ocean" strategy: continuing to fight with other incumbents for a smaller and smaller share of potential consumers.³⁹ Eventually, over time, the insurgents grow their market share from the lower end of the market to other segments of that market, ultimately displacing incumbent providers altogether.⁴⁰ This phenomenon has even been given a term: to be "Netflixed," after the Internet-based video services company that displaced other home video companies.⁴¹

³⁴ See REBECCA L. SANDEFUR, AM. BAR FOUND., ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 13 (2014).

³⁵ See *id.* at 3, 12.

³⁶ CLAYTON M. CHRISTENSEN, THE INNOVATOR'S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL xiii–xiv (1997) [hereinafter INNOVATOR'S DILEMMA]. In a more recent, co-authored work, Christensen sums up the theory as follows. It "explain[s] the phenomenon by which an innovation transforms an existing market or sector by introducing simplicity, convenience, accessibility, and affordability where complication and high cost have become the status quo—eventually completing redefining the industry." CLAYTON M. CHRISTENSEN ET AL., COMPETING AGAINST LUCK: THE STORY OF INNOVATION AND CUSTOMER CHOICE 5 (2016).

³⁷ See INNOVATOR'S DILEMMA, *supra* note 36, at xvi.

³⁸ See *id.* at xvii.

³⁹ See Zoran Janevski, *Blue Ocean Strategy in E-commerce Businesses*, 14 ECON. DEV. 123, 124 (2012) (comparing "Red Ocean" strategy to its opposite, "Blue Ocean" strategy).

⁴⁰ See INNOVATOR'S DILEMMA, *supra* note 36, at 14, 24.

⁴¹ See, e.g., Kevin Harrington, *Is Your Company About to Get Netflixed?*, FORBES (Oct. 15,

The legal services market appears in the midst of this kind of disruption. Incumbent providers have enjoyed a monopoly on the delivery of legal services and currently deliver a service that many American consumers cannot afford.⁴² New entrants are threatening this monopoly by providing services that are more affordable and more accessible.⁴³ Whether those new entrants, or regulators, consider these services to be legal services or not, millions of consumers are turning to these providers in an attempt to satisfy their legal needs.⁴⁴ This poses a significant threat to many service providers, though it is possible that it has not yet impacted Big Law too significantly,⁴⁵ likely because these new entrants are not competing in the higher end of the legal services market, though Big Law is facing threats of its own.⁴⁶ If Christensen's theories are applicable and relevant to the legal services market, the innovations and innovators infiltrating the lower end of the legal services market will eventually reach that higher segment of the market.⁴⁷ For now, however, new entrants to the legal services market are either taking clients from providers that reach consumers in other segments of the market,⁴⁸ or are serving consumers who could not afford a lawyer in the first place,⁴⁹ creating customers who would not have sought out legal services before.

2013), [http:// www.forbes.com/sites/kevinharrington/2013/10/15/is-your-company-about-to-get-netflixed/](http://www.forbes.com/sites/kevinharrington/2013/10/15/is-your-company-about-to-get-netflixed/).

⁴² See Lauren Moxley, Note, *Zooming Past the Monopoly: A Consumer Rights Approach to Reforming the Lawyer's Monopoly and Improving Access to Justice*, 9 HARV. L. & POL'Y REV. 553, 554–55 (2015).

⁴³ See Barton, *supra* note 29, at 3073. For example, LegalZoom® has made the following claims in filings with the U.S. Securities and Exchange Commission:

We have served approximately two million customers over the last [ten] years. In 2011, nine out of ten of our surveyed customers said they would recommend LegalZoom[®] to their friends and family, our customers placed approximately 490,000 orders and more than [twenty] percent of new California limited liability companies were formed using our online legal platform.

LegalZoom.com, Inc., Registration Statement (Form S-1) (May 10, 2012).

⁴⁴ See Barton, *supra* note 29, at 3073.

⁴⁵ See *id.* at 3070.

⁴⁶ See Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 759–60, 761, 763, 766, 767 (2010).

⁴⁷ See, e.g., INNOVATOR'S DILEMMA, *supra* note 36, at 24 ("It was as if the leading firms were held captive by their customers, enabling attacking entrant firms to topple the incumbent industry leaders each time a disruptive technology emerged."). Of course, like all theories, Christensen's is not ironclad, and he has his critics. See, e.g., Jill Lepore, *The Disruption Machine: What the Gospel of Innovation Gets Wrong*, NEW YORKER, June 23, 2014, <http://www.newyorker.com/magazine/2014/06/23/the-disruption-machine>.

⁴⁸ See Barton, *supra* note 29, at 3073.

⁴⁹ See *id.*

While the prospect of creating new customers through technology-enabled legal services is likely an enticing one for the legal profession, it is possible that these new customers would never seek assistance from traditional legal services providers.⁵⁰ Facing this range of threats, then, traditional legal services providers will have to grapple with the five threats described above.⁵¹ Some will fight new entrants through regulatory arbitrage, seeking an advantage by relying on barriers to entry to the profession to police these new entrants.⁵² But many such challenges to date have failed in curbing the practices of new entrants in any significant way.⁵³ Moreover, as more consumers utilize the services of companies like LegalZoom®, they will likely develop a constituency that will want affordable and accessible services, and regulators will be hard pressed to step in to rein in such providers.⁵⁴ As an example, when the courts in Texas tried to police certain self-help assistance in the area of family law as the unauthorized practice of law, the Texas legislature interceded to override the judiciary.⁵⁵

All of these pressures have meant less of a demand for legal services delivered through traditional means and a concomitant diminution in law graduate employment opportunities, which is impacting law school enrollment.⁵⁶ Some question whether this is a temporary state of affairs following the Great Recession, or a “new normal.”⁵⁷ In order for the legal profession, and law schools, to ensure they are still relevant in the twenty-first century, they must develop an understanding of their central role in society, even as society faces significant shifts brought on by technological advances, globalization, and other forces. As stated above, what lawyers do is solve problems. In order for lawyers to remain relevant in the twenty-first century

⁵⁰ *See id.*

⁵¹ These are similar to some of the threats to Big Law that Larry Ribstein has identified in his piece on the impact of contemporary trends on large law firms. *See* Ribstein, *supra* note 46, at 759–60, 761, 763, 766–67.

⁵² *See* Barton, *supra* note 29, at 3083–84, 3085–88 (describing the role of regulation in policing new, technology-enabled forms of providing legal assistance).

⁵³ *See, e.g.*, BENJAMIN H. BARTON, GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION 91, 92 (2015).

⁵⁴ *See id.* at 92.

⁵⁵ *See* Julee C. Fischer, Note, *Policing the Self-Help Legal Market: Consumer Protection or Protection of the Legal Cartel?*, 34 IND. L. REV. 121, 131, 132 (2000).

⁵⁶ *See* Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs are Cut*, N.Y. TIMES (Jan. 30, 2013), http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?_r=1.

⁵⁷ *See* Phil Weiser, *Five Initiatives that Legal Education Needs*, LEGAL REBELS (Sept. 26, 2013), http://www.abajournal.com/legalrebels/article/five_initiatives_that_legal_education_needs (describing the state of affairs of law schools as a “new normal”).

they must be able to address the problems of the twenty-first century in ways that match the contours of the modern age. To address the problems of today and tomorrow, one must understand the current social, political, and economic contexts in which the legal profession and law schools find themselves. To do that, I turn to the previously referenced work by author Daniel Pink: *A Whole New Mind: Why Right-Brainers will Rule the Future*.⁵⁸

⁵⁸ This article is not intended to serve as a book review of Pink's *A Whole New Mind*, and apologies to the reader if it can come across that way in these pages. The purpose of using Pink, instead, is as a lens through which to assess the role of lawyers in the twenty-first century. Admittedly, Pink is not the only author to identify and attempt to address the challenges workers and economies face in addressing the modern, technology- and globalization-fueled era. Indeed, I do not believe that Pink's *A Whole New Mind* is the first and last word on the challenges facing society in general or the legal profession in particular, but I find Pink's way of framing the threats to modern knowledge workers, and the ways of addressing those threats, as helpful as a launching point for a discussion on the future of creative problem solving in general and creative legal problem solving in particular. Yet, other works that address some of these and similar issues exist. *See, e.g.*, BRYNJOLFSSON & MCAFEE, *supra* note 6, at 190–202 (discussing the superiority of human intelligence and abilities compared to machine learning and artificial intelligence); STEVE CASE, *THE THIRD WAVE: AN ENTREPRENEUR'S VISION OF THE FUTURE* 185–200 (2016) (assessing the potential impact of technological change on economic development and economic opportunity); FRIEDMAN, *supra* note 6, at 203–43 (identifying strategies for dealing with the impact of technology on employment); KEVIN KELLY, *THE INEVITABLE: UNDERSTANDING THE 12 TECHNOLOGICAL FORCES THAT WILL SHAPE OUR FUTURE* 29–60 (2016) (assessing the role of machine learning and artificial intelligence on employment opportunities in a range of industries); ALEC ROSS, *THE INDUSTRIES OF THE FUTURE* 35–42 (2015) (discussing the role of automation and artificial intelligence on employment prospects of various industries); RICHARD SUSSKIND & DANIEL SUSSKIND, *THE FUTURE OF THE PROFESSIONS: HOW TECHNOLOGY WILL TRANSFORM THE WORK OF HUMAN EXPERTS* 45–99 (2015) (discussing the role of technology on various professions, including the legal profession). All of these forces also have a potential impact on economic inequality. *See, e.g.*, JAMES BESSEN, *LEARNING BY DOING: THE REAL CONNECTION BETWEEN INNOVATION, WAGES, AND WEALTH* 222–28 (2015) (discussing the role of social mobility and social role flexibility in labor's adaptation to technological change as a way to address economic inequality brought about by such change); THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* 305–06 (2014) (discussing the interplay of technology, education, and inequality); DOUGLAS RUSHKOFF, *THROWING ROCKS AT THE GOOGLE BUS: HOW GROWTH BECAME THE ENEMY OF PROSPERITY* 222–39 (2016) (describing ways technology can help combat economic inequality and foster sustainable prosperity). Some authors even look at the legal profession in light of some of these changes. *See, e.g.*, BARTON, *supra* note 53, at 191–214 (discussing the role of technology in improving access to justice); DEBORAH RHODE, *THE TROUBLE WITH LAWYERS* 9–10 (2015) (describing the “drivers of change” in the legal profession, including new technologies); RICHARD SUSSKIND, *THE END OF LAWYERS: RETHINKING THE NATURE OF LEGAL SERVICES* 98–141 (2010) (describing technologies that threaten to “disrupt” the legal profession).

II. PINK'S "WHOLE NEW MIND" AND THE LEGAL PROFESSION IN THE CONCEPTUAL AGE

A. A "Whole New Mind"

In his work, Daniel Pink argues that we have "progressed from a society of farmers to a society of factory workers to a society of knowledge workers. And now we're progressing yet again—to a society of creators and empathizers, of pattern recognizers and meaning makers."⁵⁹ This new period is what Pink calls the Conceptual Age, and, in this age, the "keys [of] the kingdom are changing hands" from computer coders, lawyers, and analytical business minds to those with different skills.⁶⁰ The beneficiaries of the age, "artists, inventors, designers, storytellers, caregivers, consolers, [and] big picture thinkers" are those who "will now reap society's richest rewards and share its greatest joys."

According to Pink, the Conceptual Age is "animated by a different form of thinking and a new approach to life . . ." ⁶¹ It requires "'high concept' and 'high touch'" aptitudes.⁶² "High concept involves the capacity to detect patterns and opportunities, to create artistic and emotional beauty, to craft a satisfying narrative, and to combine seemingly unrelated ideas into something new."⁶³ Similarly, high touch is "the ability to empathize with others, to understand the subtleties of human interaction, to find joy in one's self and to elicit it in others, and to stretch beyond the quotidian in pursuit of purpose and meaning."⁶⁴

Just as factory workers during the transition to the knowledge economy "had to master a new set of skills and learn how to bend pixels instead of steel, many of today's knowledge workers will likewise have to command a new set of aptitudes."⁶⁵ The core challenge for such workers is "to do what workers abroad cannot do equally well for much less money . . . such as forging relationships rather than executing transactions, tackling novel challenges instead of solving routine problems, and synthesizing the big picture rather than analyzing a single component."⁶⁶

⁵⁹ PINK, *supra* note 7, at 50.

⁶⁰ *See id.* at 1, 48–49.

⁶¹ *Id.* at 2.

⁶² *Id.*

⁶³ *Id.* at 2–3.

⁶⁴ *Id.* at 3.

⁶⁵ *Id.* at 39.

⁶⁶ *Id.* at 39–40.

For Pink, this array of skills emanates from within the right hemisphere of the brain and requires what he calls “R-Directed” thinking, as opposed to “L-Directed” thinking (emanating from the left side of the brain).⁶⁷ L-Directed thinking is “sequential, literal, functional, textual, and analytic.”⁶⁸ On the other hand, R-Directed thinking is “simultaneous, metaphorical, aesthetic, contextual, and synthetic.”⁶⁹ The Conceptual Age is marked by a need for R-Directed thinking and those who can master such thinking can address the forces at work that are leading to threats to the economic prospects of workers relying on L-Directed activities.⁷⁰ As Pink explains:

[T]hree forces are tilting the scales in favor of R-Directed [t]hinking. Abundance has satisfied, and even oversatisfied, the material needs of millions—boosting the significance of beauty and emotion and accelerating individuals’ search for meaning. Asia is now performing large amounts of routine, white-collar, L-Directed work at significantly lower costs, thereby forcing knowledge workers in the advanced world to master abilities that can’t be shipped overseas. And automation has begun to affect this generation’s white-collar workers in much the same way it did last generation’s blue-collar workers, requiring L-Directed professionals to develop aptitudes that computers can’t do better, faster, or cheaper.⁷¹

For Pink, these three forces—Asia, automation and abundance—are making R-Directed thinking critical in the Conceptual Age.⁷² Indeed, “[m]ere survival,” Pink argues, “depends on being able to do something that overseas knowledge workers can’t do cheaper, that powerful computers can’t do faster, and that satisfies one of the non-material, transcendent desires of an abundant age.”⁷³

For Pink, the Conceptual Age, with the domination of Asia (which I will refer to as “outsourcing”), automation, and abundance, calls for a new set of skills, or what he calls “aptitudes.”⁷⁴ These aptitudes are the following: “design,” through which one creates something

⁶⁷ See *id.* at 26.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See *id.* at 39–40.

⁷¹ *Id.* at 46–47.

⁷² See *id.* at 46–47, 48–49.

⁷³ *Id.* at 51.

⁷⁴ See *id.* at 65. I, like Pink, will use the terms “skill” and “aptitude” loosely throughout this article. Some of the aptitudes Pink suggests one must deploy in the contemporary era are not aptitudes but techniques or methods, like engaging in storytelling. This cluster of skills/aptitudes are really, themselves, heuristics, or even metaphors, for thinking about the approaches one needs to take to excel in a globalized, multi-national economy.

beautiful or engaging; “story,” telling a compelling narrative; “symphony,” synthesizing and seeing the big picture and marshalling and coordinating resources; “empathy,” forming relationships and seeing the world through the eyes of another; “play,” engaging lightheartedly; and “meaning,” pursuing fulfillment.⁷⁵ I shall return to each of these aptitudes throughout the course of this article and explore how they are relevant to the legal profession, and law schools, in the early twenty-first century and beyond.

B. The Conceptual Age and the Legal Profession

Whether one agrees with Pink’s assessment that outsourcing, automation, and abundance have ushered in a new age,⁷⁶ there is no doubt that the legal profession faces challenges from automation and other forces that are threatening the viability of the business models of many law firms.⁷⁷ It is probably not abundance, but rather, the lack thereof, that is driving much of the pressure on the profession.⁷⁸ While automation, digitization, and outsourcing are certainly impacting the legal profession,⁷⁹ “abundance” is not the term that immediately comes to mind when one thinks of the fact that many young lawyers are currently looking for work in their chosen profession at the same time that many low- and moderate-income individuals are facing their legal problems without a lawyer.⁸⁰ Indeed, there are forces other than abundance that may be shaping the way the legal profession operates and are causing significant changes in the way legal services are delivered in the United States and elsewhere.⁸¹

Client concerns over cost and the fact that many low- and moderate-income people simply cannot afford an attorney are forces threatening to spur change in the way in which legal services are provided.⁸² Savings-conscious clients are looking for more cost-effective ways to obtain services and are turning to lower-cost alternatives, like LegalZoom®, for their legal needs.⁸³ Firms large

⁷⁵ See *id.* at 65–67 (describing the six aptitudes in depth).

⁷⁶ See *id.* at 48–50.

⁷⁷ See, e.g., SUSSKIND, *supra* note 58, at 1, 2, 3.

⁷⁸ See Brian Sheppard, *Incomplete Innovation and the Premature Disruption of Legal Services*, 2015 MICH. ST. L. REV. 1797, 1804 (2016).

⁷⁹ See PINK, *supra* note 7, at 45–47.

⁸⁰ See Sheppard, *supra* note 78, at 1804, 1898–99.

⁸¹ See *infra* notes 101–04.

⁸² See SANDEFUR, *supra* note 34, at 3.

⁸³ See Moxley, *supra* note 42, at 553, 566–67 (describing the cost structure of many LegalZoom® products); see also BARTON, *supra* note 53, at 91, 92, 93 (describing the market

and small are outsourcing document review and production tasks, both to overseas operations⁸⁴ as well as domestic entities that are employing lawyers to serve in a range of capacities⁸⁵ and paying them a fraction of the salaries they would fetch were they employed as associates in the firms that contract with those lawyers' employers.⁸⁶ These forces have had significant impacts on lawyers, but they have also affected law schools, with many but the most elite institutions facing near existential threats in the form of greatly diminished enrollment numbers for their students, likely a result of lowered employment rates, high tuition costs, and high debt for their graduates.⁸⁷

In the context of the changes afoot in the legal profession, perhaps the right way to consider the role of abundance in those changes is to think of the potential options some clients have to attempt to address their legal needs: i.e., to solve their problems in ways that deploy legal education and training through the exercise of professional judgment. Where two decades ago, clients had few options outside of paying for a lawyer at a premium to have their legal needs met, today, clients have a growing array of options to obtain some level of service, from full service to online document assembly and advice, options made possible by the Internet, new computing capacities, and mobile communications technologies.⁸⁸ Lawyers are using new forms of communication, machine learning, and Big Data to streamline legal services and make them less costly to deliver.⁸⁹ These cost-

impact of LegalZoom®); Sheppard, *supra* note 78, at 1813, 1814, 1815 (providing an overview of the ways in which the legal services market may be affected by changes in the manner in which legal services can be delivered).

⁸⁴ See Carlo D'Angelo, *Overseas Legal Outsourcing and the American Legal Profession: Friend or "Flattener"?*, 14 TEX. WESLEYAN L. REV. 167, 171 (2008) (discussing legal outsourcing).

⁸⁵ See John S. Dzienkowski, *The Legal Profession's Monopoly on the Practice of Law: The Future of Big Law: Alternative Legal Service Providers to Corporate Clients*, 82 FORDHAM L. REV. 2995, 2995, 2996, 2997 (2014) (providing an overview of some alternative models of legal services delivery).

⁸⁶ See Vincent R. Johnson & Virginia Coyle, *On the Transformation of the Legal Profession: The Advent of Temporary Lawyering*, 66 NOTRE DAME L. REV. 359, 371 (1990).

⁸⁷ For a discussion of some of the issues creating the "crisis" in legal education and possible avenues for reform, there is no shortage of scholarship on the subject. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* ix (2012); William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 461–62 (2013); James E. Moliterno, *And Now a Crisis in Legal Education*, 44 SETON HALL L. REV. 1069, 1071 (2014); see also Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 201, 202 (2016) (providing a progressive critique of the most prominent theorists on law school reform).

⁸⁸ See Sheppard, *supra* note 78, at 1804–05.

⁸⁹ See SUSSKIND & SUSSKIND, *supra* note 58, at 160, 162–63, 164 (discussing the current and potential impact of technology on the delivery of legal services).

savings are often passed along to consumers, challenging, in some instances, the viability of the revenue model of traditional firms that use a cost structure built on charging clients for time spent by newer associates on legal tasks that, in some instances now, can be performed for far less, and in far less time, by computers.⁹⁰

These innovations in the delivery of legal services mean more client choice. Clients can still seek a traditional lawyer-client relationship and pay for that privilege.⁹¹ At the same time, they can pursue minimal services from certain outlets, like LegalZoom® and others; can obtain limited, so-called unbundled services in many jurisdictions;⁹² can consult websites for information; or can download forms from the Internet.⁹³

This array of services comes at a range of price points, from retail services at the high end of the range, or at a fraction of the cost on the low end of the range, with a concomitant change in the nature of the services.⁹⁴ On that low end, the client is also likely receiving commoditized services: services that are not tailored to the client's specific needs, but rather, the services are "one size fits many."⁹⁵

These changes in the market for legal services (the introduction of automation, machine learning, and other innovations) have made services that are arguably legal in nature less costly than traditional legal services, and yet far too many potential clients still go without services.⁹⁶ For those who do seek assistance, the demand for more affordable legal services is creating a shift in the market. Many potential clients who, prior to this shift, might have retained a lawyer and paid a premium for doing so, are now turning to more affordable alternatives.⁹⁷ Others, who might not have been able to afford a lawyer before this shift, are now turning to these lower-cost

⁹⁰ See Susan Hackett, *Corporate Counsel and the Evolution of Practical Ethical Navigation: An Overview of the Changing Dynamics of Professional Responsibility in In-House Practice*, 25 GEO. J. LEGAL ETHICS 317, 339 (2012) (describing the traditional business model of firms and the new "value-based" pricing).

⁹¹ See Chris Johnson, *Leveraging Technology to Deliver Legal Services*, 23 HARV. J. L. & TECH. 259, 268, 282 (2009).

⁹² See Fern Fisher-Brandveen & Rochelle Klempner, *Unbundled Legal Services: Untying the Bundle in New York State*, 29 FORDHAM URB. L.J. 1107, 1114–21 (2002) (providing a description of unbundled legal services and their ethical implications).

⁹³ See Richard D. Felice, *The Changing Market for Legal Services*, ILL. B. J., Apr. 2015, at 8, 8 (discussing some of the online service providers looking to disrupt the practice of law).

⁹⁴ See Raymond H. Brescia, *What We Know and Need to Know about Disruptive Innovation*, 67 S.C. L. REV. 203, 209 (2016) (discussing commoditized legal services).

⁹⁵ See *id.* at 213 (discussing commoditized legal services).

⁹⁶ See *id.* at 210; *supra* note 77, 79 and accompanying text.

⁹⁷ See Brescia, *supra* note 94, at 207, 209.

alternatives.⁹⁸ At the same time, even as providers of legal services are exploring ways to improve access to justice through technology, the federal government, one of the primary funders of legal services for the indigent, has cut funding to the Legal Services Corporation (“LSC”), meaning fewer eligible clients can receive representation from organizations receiving LSC funds.⁹⁹ These cuts translated into the loss of staff who could have served otherwise eligible clients.¹⁰⁰

The shift in the market is not just a function of clients wanting to reduce the costs of legal services for the sake of reducing their costs, however. Clients are becoming more cost-conscious because they have to be.¹⁰¹ The Great Recession impacted all sectors, private and public, and, although the U.S. economy has been technically out of recession for years,¹⁰² clients are still concerned by the high cost of legal services and are not looking to pay a premium unless they have to: in instances of “bet the farm” litigation or high stakes deals.¹⁰³ The typical client who can afford legal services nevertheless is looking to explore ways to reduce the cost of those services, and, in some instances at least, turning to non-traditional means of obtaining legal assistance outside the conventional attorney-client relationship.¹⁰⁴

Thus, while Pink posits that abundance is one of the factors influencing the job market and the economy of the future, when it comes to the market for legal services, it is possible that automation, and, to a lesser extent, outsourcing, is having a greater impact on that market,¹⁰⁵ leading to tighter budgets, less money for legal

⁹⁸ See *id.* at 209.

⁹⁹ See William Booth, *Attacked as Left-Leaning, Legal Services Suffers Deep Cuts*, WASH. POST (June 1, 1996), <https://www.washingtonpost.com/archive/politics/1996/06/01/attacked-as-left-leaning-legal-services-suffers-deep-cuts/caee36f5-114e-4068-899e-5e559ab7954a/>; see also LEGAL SERVS. CORP., REPORT OF THE PRO BONO TASK FORCE 2 (2012), http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf (describing the consequences that the Legal Services Corporation faced after budget cuts).

¹⁰⁰ See LEGAL SERVS. CORP., *supra* note 99, at 2 (noting that budget cuts to Legal Services Corporation-funded organizations resulted in the elimination of 241 attorney positions across the country).

¹⁰¹ See Mark C. Suchman, *Working without a Net: The Sociology of Legal Ethics in Corporate Litigation*, 67 FORDHAM L. REV. 837, 864 (1998) (describing the cost consciousness of clients).

¹⁰² See JOSH BIVENS ET AL., ECON. POL’Y INST., FROM FREE-FALL TO STAGNATION (2013), <http://www.epi.org/publication/bp355-five-years-after-start-of-great-recession/>.

¹⁰³ See Ron Friedmann & Toby Brown, “Bet the Farm” Versus “Law Factory”: Which One Works?, 3 GEEKS & L. BLOG (Mar. 22, 2011), <http://www.geeklawblog.com/2011/03/bet-farm-versus-law-factory-which-one.html/> (comparing briefly so-called “bet the farm” work with the provision of commoditized services (i.e., a “law factory”).

¹⁰⁴ See Moxley, *supra* note 42, at 554, 566–67.

¹⁰⁵ See PINK, *supra* note 7, at 34; D’Angelo, *supra* note 84, at 169; Moxley, *supra* note 42, at 553.

services, and a market opportunity for providers of legal services to leverage technology to offer some services at a lower cost than more traditional providers of legal services.¹⁰⁶ At the same time, there is a kind of abundance: clients have new options and have a range of ways of meeting their legal needs. They thus have new choices, choices that force lawyers to adapt to new modes of delivering services. Law schools, too, must adapt to this new reality, one marked by both scarcity and abundance. I shall return to these themes in Parts IV and V.

In the next Part, I will explore a problem-solving course I lead at Albany Law School that attempts to prepare students for the challenges they will face as professionals in the twenty-first century as these forces converge to transform the practice of law and the legal profession. I hope to show that the approach I take in this class is one way that law schools can prepare their students for these transformations. I hope also that the reader will benefit from this somewhat lengthy disquisition as a stepping stone for the discussion that follows it. This upcoming section is also lightly sourced in some places and merely descriptive in others, but it attempts to serve as a foil for the subsequent discussion, one which addresses not just the value of teaching interdisciplinary problem solving but also the application of Pink's skills and aptitudes of the Conceptual Age to improve the relevance and effectiveness of the legal profession in general and legal education in particular.

III. THE *LAW AND SOCIAL INNOVATION* CLASS

A. *Overview of the Course*

I started teaching *Law and Social Innovation: Creative Problem Solving* ("LSI") in 2013 as a way to build on path-breaking work that had begun at Harvard Law School several years earlier: the introduction of a "problem-solving" workshop that all first-year law students take there.¹⁰⁷ One of the goals of such problem-solving classes and workshops is to expose students to not just the primary

¹⁰⁶ See D'Angelo, *supra* note 84, 182, 183–84; Moxley, *supra* note 42, at 565, 566–67.

¹⁰⁷ See *Problem Solving Workshop*, HARV. L. SCH., <http://hls.harvard.edu/dept/academics/winter-term/problem-solving-workshop/> (last visited May 24, 2016). According to one survey conducted of ABA-approved law schools, a majority of such schools "make explicit reference to 'problem solving' in their course or program descriptions available online." Natt Gantt, II, *supra* note 5, at 702. Stanford Law School also has a policy design workshop. See *Law and Policy Lab*, STAN. L. SCH., <https://law.stanford.edu/education/only-at-sls/law-policy-lab/> (last visited Oct. 21, 2016).

focus of what most lawyers do—they solve problems—but also to the ways in which lawyers go about doing so: taking into account client needs, developing a factual and contextual understanding of a problem, and balancing what is legal with what is possible in a particular situation given resource, political, ethical, moral, and practical constraints.¹⁰⁸

It is difficult for law students to learn problem solving by reading appellate cases and statutes.¹⁰⁹ Law schools need to expose students to contexts in which they can assess the constraints lawyers face when they attempt to play this critical role.¹¹⁰ Problem-solving courses attempt to place students in situations where they can understand not just these constraints but the lawyer's role in operating within them, even while he or she tests their actual and perceived limits.¹¹¹ A typical problem-solving course will place a student or a team of students within a "problem" an imagined client faces and ask students to develop the facts of that problem, understand the client's issues and concerns, research the relevant law, and appreciate any moral or ethical issues facing the lawyer's and the client's decision-making process.¹¹² The facts and the law may be given to the students, they may have to research them from "canned" materials (i.e., a pre-selected or pre-prepared factual and legal record), or students may interview actors who have been given a script from which to supply their answers to the questions posed by the students.¹¹³ The universe of the problem is generally circumscribed and closed in these problem-solving simulations.¹¹⁴ I will explain shortly how my class is different from a class in which

¹⁰⁸ Samples of scholarship on problem-solving courses and problem-solving instruction currently exist. See, e.g., Brest, *supra* note 22, at 5; Alan M. Lerner, *Using Our Brains: What Cognitive Science and Social Psychology Teach Us about Teaching Law Students to Make Ethical, Professionally Responsible, Choices*, 23 QUINNIPIAC L. REV. 643, 689 (2004); Stephen Nathanson, *Developing Legal Problem-Solving Skills*, 44 J. LEGAL EDUC. 215, 217 (1994); Kathleen Elliott Vinson, *What's Your Problem?*, 44 STETSON L. REV. 777, 782, 783 (2015).

¹⁰⁹ In a keynote address by then-Attorney General Janet Reno to the American Association of Law Schools, Reno implored law schools to teach problem solving and to appreciate how such problems arise: "Before there are cases and long before there are any appellate decisions for us to study, there are people or corporations or government agencies with problems. In real life, most clients don't present themselves or their problems the way these are framed in a court of appeals decision." Janet Reno, *Lawyers as Problem-Solvers: Keynote Address to the AALS*, 49 J. LEGAL EDUC. 5, 6 (1999). At least one scholar offered a response to Reno's keynote address. See Carrie Menkel-Meadow, *Taking Problem-Solving Pedagogy Seriously: A Response to the Attorney General*, 49 J. LEGAL EDUC. 14, 14 (1999).

¹¹⁰ See Brest, *supra* note 22, at 10.

¹¹¹ See *id.*

¹¹² See, e.g., Menkel-Meadow, *supra* note 109, at 19–20.

¹¹³ See, e.g., *id.* at 19 n.15; Vinson, *supra* note 108, at 787–88.

¹¹⁴ See, e.g., Menkel-Meadow, *supra* note 109, at 19 n.15.

the problem the students must solve is simulated.¹¹⁵

In terms of the materials and subject matter of the course I help to lead, since most of our work now centers around economic development issues, urban planning issues, and the current state of the urban economies of Upstate New York,¹¹⁶ I begin the first few classes with background reading on urban planning, the economic fallout from the Financial Crisis of 2008, and lingering issues around foreclosed and abandoned properties in older industrial cities.¹¹⁷ We then move on to discussions about some of the skills that I want students to acquire throughout the course, which are discussed in greater detail below, like making oral presentations and working in teams.¹¹⁸ Finally, the students draft policy reports on the specific problems we tackle in the course each semester and prepare final presentations for our community partners describing the policy recommendations contained in those reports.¹¹⁹ We spend most of the last third of the class reviewing, revising, editing, and updating the reports and the students practice their presentations many times in preparation for their oral “pitch” of their ideas to the partners.¹²⁰ We spend time in class as a group, and the students are encouraged to work collectively and in smaller teams outside of the class to hone the reports and their presentations.¹²¹ The semester culminates in the oral presentations and the delivery of the final reports to our partners.¹²² What follows is a detailed description of the learning objectives of the class and the ways in which I attempt to achieve those objectives.

B. Learning Objectives and Teaching Methodologies

My learning objectives for the class are to teach students not only a range of skills but also the processes and tactics for getting the most out of themselves as emerging lawyers and professionals, as knowledge workers,¹²³ as problem solvers, as policy entrepreneurs,¹²⁴

¹¹⁵ See *infra* Part III(B).

¹¹⁶ See BEARESE ET AL., *supra* note 14, at 5; Brescia, *supra* note 12, at 1–2.

¹¹⁷ See Brescia, *supra* note 12, at 1–2.

¹¹⁸ See *id.* at 2.

¹¹⁹ See *id.* at 4–5.

¹²⁰ See *id.*

¹²¹ See *id.*

¹²² See *id.* at 5.

¹²³ The term “knowledge worker” was first coined by Peter Drucker in the 1960s. See PETER F. DRUCKER, *THE EFFECTIVE EXECUTIVE* 2–5 (1966).

¹²⁴ As the term suggests, “policy entrepreneurs” shape policy. See JOHN W. KINGDON, *AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES* 179–80 (2d ed. 1995).

and as creators. To accomplish the learning objectives, I approach the class using a range of methodologies to expose the students to the skills I want them to practice, develop, and hone. The learning objectives and the methodologies are, in many ways, intertwined. It is difficult to achieve those objectives without having students explore them through the methodologies deployed throughout the class.¹²⁵ I meet the class objectives not just in the work the students do, but in the way they do it, as described more fully below.¹²⁶

1. Preparing the Class for the Objectives and Methodologies: The Reading Material and the Subject Matter

At the outset, I prepare students to embrace the objectives and the methodologies through a range of assigned readings. Students read materials on urban planning and the economic reality of post-industrial urban life, as well as material on social innovation, how to work in teams, how to produce collaborative work products, and how to make effective presentations.¹²⁷ Students also read about creativity and “flow,” the state of optimal performance, as described by Mihaly Csikszentmihalyi.¹²⁸ Alongside a range of more traditional skills that I attempt to impart to students—like legal analysis—I also try to ensure students have opportunities to explore other facets of the work of the profession. The primary way in which they do this is to work the way many lawyers work: on projects and in teams.¹²⁹

Students also read *A Whole New Mind*, which is not a typical law school case book, yet I assign it to students and in a way, it frames the entire course, as described in the next section.¹³⁰

2. Assessing, Using, and Applying Pink’s Aptitudes of the Conceptual Age

The reason I assign this text is that it offers students a way to think

¹²⁵ See generally Tracey Varnava & Julian Webb, *Key Aspects of Teaching and Learning: Enhancing Learning in Legal Education*, in *A HANDBOOK FOR TEACHING AND LEARNING IN HIGHER EDUCATION* 363, 364 (Heather Fry et al. eds., 3d ed. 2009) (discussing different teaching theories and methodologies which are helpful in developing student learning and growth in the field of law in higher education).

¹²⁶ See discussion *infra* Parts III(B)(1)–(B)(9).

¹²⁷ See Brescia, *supra* note 12, at 1, 2, 4.

¹²⁸ See *id.* at 2; see also MIHALY CSIKSZENTMIHALYI, *CREATIVITY: FLOW AND THE PSYCHOLOGY OF DISCOVERY AND INVENTION* 107–13 (1996) (describing optimal states of performance and creativity).

¹²⁹ See Brescia, *supra* note 12, at 1.

¹³⁰ See *id.* at 1, 3.

about problem solving in the Conceptual Age and their role as creative problem solvers in it.¹³¹ At the same time, while students find it valuable to think about the aptitudes of the Conceptual Age, they are less convinced by Pink's claim that the forces of outsourcing, automation, and abundance are driving contemporary markets and culture.¹³² What is more, the class addresses problems that are rooted in economic trends that have been devastating to older cities in the Northeast United States.¹³³ It is hard to argue that cities like Albany, Schenectady, Buffalo, Detroit, Poughkeepsie, Akron, or Cleveland are experiencing the abundance that Pink describes.¹³⁴

Indeed, the students recognize that outsourcing and automation likely have a lot to do with the state of many of these and other older American cities, a product of the loss of the manufacturing base to other regions in the United States, Latin America, and yes, Asia.¹³⁵ They also know that forces like the Great Recession of the last decade have eroded the housing stock and the tax base of many local governments affected adversely by the crash of the housing market and the foreclosure crisis that followed.¹³⁶ But many cities in Upstate New York—where our class focuses¹³⁷—faced depopulation and a loss of quality housing stock long before the late 2000s.¹³⁸ Both Albany and Schenectady have seen steep declines in their respective populations over the last fifty years.¹³⁹ While Albany's population has slowly started to grow, and is at about 100,000 at present, it is still thousands off its peak population of approximately 134,995 in 1950.¹⁴⁰

It is no surprise that the students in my class find it hard to agree with Pink's assessment that abundance is really a force at work in the communities on which the class focuses. In Albany and Schenectady, it is hard to say that there is much of an abundance of choices, of employment opportunities, or of other economic

¹³¹ See PINK, *supra* note 7, at 1–2.

¹³² See *id.* at 2–4.

¹³³ See BEARESE ET AL., *supra* note 14, at 25.

¹³⁴ See PINK, *supra* note 7, at 28, 30, 32–33, 46–47; BEARESE ET AL., *supra* note 14, at 8–10, 25, 43.

¹³⁵ See PINK, *supra* note 7, at 2–4, 30, 38.

¹³⁶ See RICHARD FLORIDA, *THE GREAT RESET: HOW NEW WAYS OF LIVING AND WORKING DRIVE POST-CRASH PROSPERITY* ix, x, 93–95, 179 (2010) (discussing these forces).

¹³⁷ See Brescia, *supra* note 12, at 1, 4–5.

¹³⁸ See DIV. OF LOCAL GOV'T SERVS. & ECON. DEV., OFFICE OF THE N.Y. STATE COMPTROLLER, *POPULATION TRENDS IN NEW YORK STATE'S CITIES* 8, 9, 10, 13 (2004), <http://www.albany.edu/albanylaw/assets/Urban-Blight-Report-9-12-16-final.pdf>.

¹³⁹ See *id.* at 7.

¹⁴⁰ See *id.*; *Albany Population Statistics*, N.Y. STATE MUSEUM, <http://exhibitions.nysm.nysed.gov/albany/population.html> (last updated May 11, 2012).

benefits.¹⁴¹ Facing poverty rates well into the double digits, a weak tax base, and tight fiscal budgets, these cities struggle with the basic components of local governance: maintaining police and fire services, providing quality schools, fixing potholes, etc.¹⁴² They do not enjoy the luxuries and the options seemingly available in Pink's age of abundance.¹⁴³

To be fair, Pink published *A Whole New Mind* in the mid-2000s before the housing crash, where abundance was more widespread perhaps, but it is hard to argue that older, post-industrial cities ever experienced it.¹⁴⁴ In our discussion about the salience of the book to their work, the students challenge this component of Pink's analysis and reject his assessment that abundance serves as a central organizing principle in today's economy or the contemporary age. At the same time, by addressing some of the issues post-industrial American cities face, the problems the students attempt to address in the course are likely a result, in no small measure, of at least two of the forces Pink identifies as marking the present age: outsourcing and automation.

In addressing these forces and the fallout from them, I ask the students to describe the challenges that a lack of abundance has posed for our community partners: in the spring 2016 semester, our community partners were the Upstate New York cities of Albany and Schenectady that are dealing with literally hundreds of vacant properties, concentrated to a certain extent in a select number of neighborhoods, but also scattered throughout these cities.¹⁴⁵ We discuss not just the strategies we might suggest that the cities could consider to combat the blight caused by vacant properties, but also the ways we might "sell" those strategies to our local partners.¹⁴⁶ We could have the best ideas in the world but they have to fit the needs of the partner cities and capture their collective imagination as solutions they want to adopt.¹⁴⁷

¹⁴¹ See BEARESE ET AL., *supra* note 14, at 4–5.

¹⁴² See *id.*

¹⁴³ See PINK, *supra* note 7, at 32–33.

¹⁴⁴ See *id.* at 32; see also Justin Pritchard, *Mortgage Crisis Overview*, BALANCE (Aug. 10, 2016), <http://www.thebalance.com/mortgage-crisis-overview-315684> (discussing briefly the housing crisis).

¹⁴⁵ See BEARESE ET AL., *supra* note 14, at 8–10; Press Release, Univ. of Albany, CTG, Albany Law Collaborate on Issue of Urban Blight (May 11, 2016), <http://www.albany.edu/news/69617.php>.

¹⁴⁶ See Brescia, *supra* note 12, at 1, 5.

¹⁴⁷ See HOW CITIES WILL SAVE THE WORLD: URBAN INNOVATION IN THE FACE OF POPULATION FLOWS, CLIMATE CHANGE AND ECONOMIC INEQUALITY 221–29 (Ray Brescia & John Travis Marshall eds., 2016) [hereinafter HOW CITIES WILL SAVE THE WORLD] (providing a collection of

As we discuss how to craft creative solutions to the problems posed by the cities, the students begin to identify the approaches they would take to convince the partners to adopt the students' ideas.¹⁴⁸ They think about the needs of the cities and strive to understand the political, legal, and fiscal environment constraining city action.¹⁴⁹ They look for the best solutions to the problems and realize that not all approaches are legal in nature: inevitably, some will come from other disciplines. The students realize that they will have to work in an interdisciplinary fashion to craft the best solutions. Wanting to capture the interest and maybe the imagination of their partners, they think about how to present their ideas and explore ways to weave their ideas into a powerful and poignant narrative that will encourage their solutions' adoption. Knowing that their ideas could have a real impact on their partners and the communities in which they live, the students are motivated to craft effective solutions and to communicate them in a compelling way.

This review of these different components of the work reveals that in many instances, the students are, in fact, deploying the six Pink aptitudes of the Conceptual Age. They are attempting to develop and "design" ideas that are engaging. They are trying to tell a compelling narrative or story. They are pulling together disparate ideas from interdisciplinary sources, and marshalling resources, their own and those of others.¹⁵⁰ Their ideas are formed after they have developed empathy for our partners through interviews, researching the constraints under which they are operating, and learning about the strategies the cities have tried to address the problems posed and whether or not they have worked.¹⁵¹ While they may not incorporate "play" per se, the students are encouraged to approach their work in a serious way but also to try to have fun while doing it: sharing meals, meeting outside of class, and enjoying time together when the work is done. They feel a sense of ownership over the issues they are addressing, because they know the cities need the help the students are providing and if the cities adopt their ideas it will likely make life in the cities better.¹⁵² As a result, their work has meaning. It serves a cause greater than themselves.¹⁵³

essays on creative solutions that address some of these urban issues and others).

¹⁴⁸ See Brescia, *supra* note 12, at 3, 4.

¹⁴⁹ See BEARESE ET AL., *supra* note 14, at 1.

¹⁵⁰ See Press Release, *supra* note 145.

¹⁵¹ See BEARESE ET AL., *supra* note 14, at 5.

¹⁵² See Press Release, *supra* note 145.

¹⁵³ It is argued that such efforts are a core component of what it is to live a full life. See VIKTOR E. FRANKL, *MAN'S SEARCH FOR MEANING* 110 (Ilse Lasch trans., Beacon Press 2006)

In other words, even in contexts where abundance is not present, the needs of the community are such that one can utilize the aptitudes of the Conceptual Age to engage in effective problem solving for impact. Even where scarcity dominates, and perhaps *because* it dominates, harnessing the concepts of design, story, symphony, empathy, play, and meaning can serve as an effective approach to addressing needs.¹⁵⁴ Just because these aptitudes are relevant in the Conceptual Age in situations of abundance does not mean they are irrelevant in ones marked by scarcity. Indeed, perhaps they are even more important where communities face that scarcity and require effective solutions that capture the imagination, engage stakeholders, and solve problems within the constraints of that scarcity.

While I ask the students whether Pink's description of the aptitudes of the Conceptual Age might hold true regardless of whether he misses the mark by relying at least in part on the notion of abundance as a defining issue of the day, I also challenge them to think about the value of these aptitudes in situations of both scarcity and abundance and whether they are ideas that are useful as they chart out their work for the course and their own futures both in the legal profession and outside of it. In the end, the students utilize these aptitudes, consciously and unconsciously, in developing their class projects and I hope that they find ways to adopt them in other aspects of their training and their careers after law school. I will return to these themes in Part III(C).

3. Project-Based Learning

In addition to the readings and class discussion, another important component of the class is that the students work on projects, typically designed around assisting local governments tackle thorny legal and social problems they face.¹⁵⁵ In the context of law school pedagogy, projects have been described as having the following components:

Projects typically have the explicit goal of teaching complex problem-solving; take an expansive view of lawyering skills; tackle ill-structured, complex or multifaceted problems; require a significant amount of interaction and collaboration

(1946).

¹⁵⁴ See PINK, *supra* note 7, at 67. Indeed, as the old saying goes, sometimes attributed to Plato: "Necessity is the mother of invention." See PLATO, THE REPUBLIC 53 (Benjamin Jowett trans., Mockingbird Classics Publ'g 2017) (360 B.C.).

¹⁵⁵ See *infra* notes 200–04 and accompanying text.

with community members and professionals from other fields, whether as clients, partners, or advisors; and explicitly seek to have an impact or create change beyond an individual client.¹⁵⁶

As a core component of the class, students work in teams to tackle problems local community partners are facing, typically selected by those partners for the students to address.¹⁵⁷ The first time I taught the class, I allowed the students to break up into teams and choose both the issue and the project on which they wanted to work. We then searched for community partners we thought might benefit from the work of the students. In some respects, the student projects became “add ons” to those community partners. These were not projects those partners had chosen and thus the problems the students set out to solve were not necessarily problems the partners would have identified as representing their own as priorities. While the student work in this first semester was timely and important—they chose tackling the problems of both the challenges posed by providing long-term housing for survivors of intimate partner violence and strategies for addressing brownfield contamination—it sometimes felt like the community partners were not as engaged as they might have been because the students were not addressing priority problems for such partners.

In subsequent semesters, we have started with identifying community partners and then worked with such partners to identify projects that would be important to them for the students to tackle. In an effort to form a town-gown partnership as a way of leveraging resources across institutions, our initial partner in this new phase in the course was the government of the City of Albany, the city in which the law school is located.¹⁵⁸ Prior to the beginning of each semester after the first, I have sat down with city officials to identify the issues most important to those officials that the students could address over the course of a single semester. City officials have identified a range

¹⁵⁶ Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 CLINICAL L. REV. 39, 50–51 (2013).

¹⁵⁷ See Brescia, *supra* note 12, at 1.

¹⁵⁸ See *id.* A body of scholarship explores the role of educational institutions in spanning the divide between local governments and such institutions to achieve sustainable, effective development. See, e.g., John C. Dernbach, *The Essential and Growing Role of Legal Education in Achieving Sustainability*, 60 J. LEGAL EDUC. 489, 514–15 (2011); Keith H. Hirokawa & Patricia Salkin, *Can Urban University Expansion and Sustainable Development Co-Exist?: A Case Study in Progress on Columbia*, 37 FORDHAM URB. L.J. 637, 669–96 (2010); Susan Sturm, *Activating Systemic Change toward Full Participation: The Pivotal Role of Boundary Spanning Institutional Intermediaries*, 54 ST. LOUIS L.J. 1117, 1134–36 (2007).

of issues over the last few years they wanted addressed by the students: e.g., the need to develop a “greener” building code, the high cost of street-light maintenance and strategies for overhauling city contracts for maintenance of such streetlights, and a desire to explore ways to open up city streets for more food trucks within city limits.

Project selection and vetting is a critical component of ensuring pedagogical success.¹⁵⁹ At a minimum, any projects the students undertake will have to have a legal component to them so the students will have to conduct at least some complex legal research to complete them.¹⁶⁰ Indeed, even the food truck project required legal analysis of the process for granting food truck permits and an assessment of local zoning ordinances to determine what amendments were needed to expand food truck access throughout the city. The projects also could not be “make work” for the students. I always want the projects to be something that is important for our community partners but not something they necessarily have the resources to address on their own with in-house expertise. Given tight municipal budgets at the time,¹⁶¹ the projects are unlikely to be ones that the community partners would hire outside consultants to tackle; the fact that the students offer their services free of charge to the community partners is something that the partners clearly appreciate.

I would also describe the projects as “stretch” goals for the students: that is, they are complex and will probably push them beyond their current skills and abilities to help them to develop as professionals.¹⁶² In his recent work, *Peak: Secrets from the New*

¹⁵⁹ See Carpenter, *supra* note 156, at 52–54. There is compelling literature on the value and importance of case selection in clinical law school settings. See, e.g., Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 350–51 (1982) (describing an effective approach to case selection); Sarah H. Paoletti, *Finding the Pearls When the World Is Your Oyster: Case and Project Selection in Clinic Design*, 5 DREXEL L. REV. 423, 439 (2013) (“When literally presented with the world from which to select . . . cases, the opportunities are limitless and the challenge becomes making choices that will accentuate the design [of the clinic] in a way that provides sufficient depth to students’ learning and reflects the multifaceted breadth of lawyering skills and values.”); Stephen Wizner & Robert Solomon, *Law as Politics: A Response to Adam Babich*, 11 CLINICAL L. REV. 473, 477 (2005) (describing the decisions surrounding what types of cases to take and which cases to take as “political decisions”).

¹⁶⁰ See Brescia, *supra* note 12, at 1.

¹⁶¹ See Richard Deitz et al., *The Recession’s Impact on the State Budgets of New York and New Jersey*, CURRENT ISSUES IN ECON. & FIN., June–July 2010, at 1, 4; Nick Niedzwiadek, *City of Albany Seeks \$12.5 Million from State to Balance 2017 Budget*, POLITICO (Oct. 3, 2016), <http://www.politico.com/states/new-york/albany/story/2016/10/albany-seeks-125-million-from-state-to-balance-2017-budget-106018>.

¹⁶² See CHARLES DUHIGG, SMARTER, FASTER, BETTER: THE SECRETS OF BEING PRODUCTIVE IN LIFE AND BUSINESS 127 (2016) (describing the value of stretch goals).

Science of Expertise, psychologist Anders Ericsson highlights a key component of developing expertise: pushing one beyond one's "comfort zone" in order to improve in a field.¹⁶³ This requires taking on new and different challenges.¹⁶⁴ Such challenges must push one beyond one's current abilities, but not beyond one's capacities.¹⁶⁵ In other words, the stretch goals must be attainable, and attainable through hard work.¹⁶⁶ Set a goal that is too easy and one will not learn; set one that is too hard, and one might get discouraged and not complete the task, and in that failure to complete the task, not learn new skills.¹⁶⁷

How these insights translate into project selection is that the projects should not push the students beyond their *potential* capacities. In other words, the projects selected cannot be beyond the reach of students, even if they must stretch a bit to complete them. With the proper guidance, there is a lot that students can do given adequate time and support, but in project selection for a one-semester, originally two-credit class, one must take into account the real and practical constraints that students face in terms of the other demands on their time.¹⁶⁸ Throughout the work in this class over the semesters, one of the greatest tensions with students has arisen over the amount of time they must devote to these projects, so, I try to be sensitive to the need to take on projects that will not consume too much of the students' time while still challenging them to develop as professionals, and I have not always succeeded. In other settings, where students might devote as much as half of their time to work in a clinic or other intensive course,¹⁶⁹ it might be possible to have more complex projects that might consume a more significant amount of the students' time over the course of the project's life; in the setting of a seminar, however, I am loath to ask students to take on projects

¹⁶³ See ANDERS ERICSSON & ROBERT POOL, PEAK: SECRETS FROM THE NEW SCIENCE OF EXPERTISE 17, 18 (2016).

¹⁶⁴ See *id.* at 19.

¹⁶⁵ See, e.g., *id.* at 20 (discussing a violinist's practice method of gradually increasing his pace to reach the desired speed).

¹⁶⁶ See DUHIGG, *supra* note 162, at 127.

¹⁶⁷ See ERICSSON & POOL, *supra* note 163, at 21.

¹⁶⁸ See Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 U. CIN. L. REV. 897, 907–09 (2013) ("In addition to class demands, students are spending a great deal of time on extracurricular tasks, including researching and obtaining summer jobs; working on journals; seeking out clinical experiences; and arguing on moot court teams. All of these opportunities add to the workload.")

¹⁶⁹ See, e.g., *Frequently Asked Questions*, ALB. L. SCH., <http://www.albanylaw.edu/centers/clinic-and-justice-center/clinics/field-placement/Pages/Frequently%20Asked%20Questions.aspx> (last visited Oct. 24, 2016) (discussing time requirements for full-semester field placements).

that they cannot accomplish in an amount of time that is commensurate with the credits they will earn in the class.¹⁷⁰

At the same time, complex, difficult problems lend themselves to deeper engagement and a richer learning experience.¹⁷¹ They give students the opportunity to explore the outer bounds of their own creativity and grit, and to develop mastery of not just a subject, but also of themselves, all the while learning how to work more effectively and collaboratively in teams.¹⁷² The project-based model thus offers students an opportunity to not just research an issue, but to understand it and to understand their role as legal problem solvers now and into the future.¹⁷³

4. Policy Advocacy and Oral Presentation Skills

Many lawyers, especially those in government, but increasingly in business and in the non-profit world, must assess and make recommendations about client behavior in light of the policy implications of such conduct and suggest ways to change the policy environment in which the client acts.¹⁷⁴ Governments, businesses, and non-profits must not just become familiar with that policy environment but must also understand the client: its operations, the fiscal constraints under which it operates, the interests of its principals and their appetite for risk and failure, and the power and role of other stakeholders that affect and constrain the client's ability to act.¹⁷⁵ The advice and guidance a lawyer may provide can suggest ways to change behavior to act within existing constraints, or to recommend ways to seek to change those constraints through legislative or policy advocacy.¹⁷⁶ Lawyers must not just learn to understand the existing constraints under which a client operates, but also the extent to which those constraints can change through effective lawyering.¹⁷⁷

¹⁷⁰ Based on student feedback, and the reality that they were spending a great deal of time working on their projects, the class was recently amended to award students four academic credits for their work.

¹⁷¹ See DUHIGG, *supra* note 162, at 127.

¹⁷² See Brescia, *supra* note 12, at 1.

¹⁷³ See TONY WAGNER, CREATING INNOVATORS: THE MAKING OF YOUNG PEOPLE WHO WILL CHANGE THE WORLD 52 (2012) (describing the value of project-based learning in education that helps spark the development of the skills of innovation).

¹⁷⁴ See Press Release, *supra* note 145; see also BEARESE ET AL., *supra* note 14, at 5, 44 (discussing the strategies and mechanisms presented to the mayors of Albany and Schenectady following the study conducted).

¹⁷⁵ See BEARESE ET AL., *supra* note 14, at 1–2.

¹⁷⁶ See *id.*

¹⁷⁷ An emerging body of scholarship explores the challenges of teaching policy advocacy in a

For some of the policy research that students conduct for the class, they recommend ways that our partner cities can embrace strategies utilized in other jurisdictions.¹⁷⁸ Whether the cities could embrace such strategies involves the students conducting both legal analysis (research into whether state constitutional restraints might inhibit the ability of the cities to adopt those strategies) and legislative research (an assessment of what local ordinances might have to change in order to put those strategies into place).¹⁷⁹ Students also need to develop an understanding of the practical and political constraints under which the cities operate and learn the appetite of the partner city administrations for risk: i.e., the extent to which they might become embroiled in litigation should the recommended strategies face legal challenges by interested parties such as banks or homeowners.¹⁸⁰

As a critical component of this work, the semester culminates in an oral presentation to the community partners of the class.¹⁸¹ The students work throughout the semester to develop both written work product—a collection of their recommendations—as well as a presentation through which they give the partners an overview of their findings in person.¹⁸² Since so much of the work in the real world involves such oral presentations—of findings, conclusions, and recommendations—this is an essential element of the class and the final presentations by the students often serve as the high point of the class.¹⁸³ In the spring 2016 semester, students presented to not just the community partners (the local mayors and their respective top advisors), but also a state-wide coalition of municipal leaders, the New York Conference of Mayors,¹⁸⁴ at its annual conference.

clinical setting. See Hina Shah, *Notes from the Field: The Role of the Lawyer in Grassroots Policy Advocacy*, 21 CLINICAL L. REV. 393, 406–21 (2015); Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, 16 CLINICAL L. REV. 451, 465–76 (2010).

¹⁷⁸ See BEARESE ET AL., *supra* note 14, at 2.

¹⁷⁹ See *id.* at 23, 33.

¹⁸⁰ See *id.* at 23.

¹⁸¹ Brescia, *supra* note 12, at 5.

¹⁸² See *id.* at 1, 5.

¹⁸³ See *id.* at 5. This act of making an oral presentation on their findings and research is similar to the Harvard Business School approach of teaching through the “case method,” whereby students present on their findings resulting from their research into business problems. See *The HBS Case Method*, HARV. BUS. SCH., <http://www.hbs.edu/mba/academic-experience/Pages/the-hbs-case-method.aspx> (last visited Nov. 2, 2016).

¹⁸⁴ See Press Release, *supra* note 145.

5. Business Process Analysis

One of the policy/legal recommendations the students made in the spring 2016 semester was that the cities could make greater use of a mechanism under state law to sue owners of abandoned properties and seize such properties without resorting to the use of costly and time-consuming eminent domain proceedings.¹⁸⁵ In order to determine whether this was a viable option for the partners, several of the law students and policy students enrolled in the class engaged in business process analysis to understand not just the information the cities would need to bring such actions against absentee and neglectful landlords, but also how the cities would need to obtain such information.¹⁸⁶ The law students developed helpful, step-by-step questionnaires that enabled code enforcement personnel to develop the facts necessary to establish when and whether a particular building met the standard of abandonment under the relevant statute and the policy students conducted in-depth research on twenty-four properties identified by the two cities to determine whether other information—like mortgage status and property tax repayment status—was available and readily attainable on the properties.¹⁸⁷ The students quickly learned that while there was a viable legal mechanism on the books that the cities could use, theoretically, to go after absentee landlords,¹⁸⁸ there were practical constraints that created significant barriers to their effective use of the statute¹⁸⁹—a phenomenon that lawyers come across every day in their work.¹⁹⁰

6. Learning Other Skills not Typically Taught in the Law School Canon

One of the explicit goals of problem-solving courses generally and of this class in particular is to expose students to opportunities to

¹⁸⁵ See N.Y. REAL PROP. ACTS. LAW § 1970 (McKinney 2016); BEARESE ET AL., *supra* note 14, at 23.

¹⁸⁶ See BEARESE ET AL., *supra* note 14, at 15, 19; see also GEOFFREY DARNTON & MOKSHA DARNTON, BUSINESS PROCESS ANALYSIS (1997) (providing an overview of business process analysis).

¹⁸⁷ See BEARESE ET AL., *supra* note 14, at 18, 20–21.

¹⁸⁸ See, e.g., *id.* at 13 (describing three legal mechanisms available to the cities: pursuing enforcement of city codes in civil court, suing under a city's vacant property registry laws, or acquiring the vacant property through the tax foreclosure process).

¹⁸⁹ See *id.* at 21–22.

¹⁹⁰ It is this type of legal process analysis that Susskind believes will be one of the core roles of lawyers in the future. See SUSSKIND, *supra* note 26, at 110–18.

develop skills they will undoubtedly need once they enter the profession, but are not often taught consciously and explicitly in the typical law school class.¹⁹¹ Professors Marjorie Shultz and Sheldon Zedeck at University of California, Berkeley have assessed the range of skills lawyers practicing today need in order to be effective.¹⁹² They identified twenty-six such factors, under eight broad categories.¹⁹³ These skills include those one might expect effective lawyers to possess, like the ability to conduct “analysis and reasoning,” to research the law, to write, and to engage in negotiations.¹⁹⁴ While these are the types of skills students often develop in law school, there are other core skills that the majority of doctrinal law school classes do not teach, like “fact finding,” “questioning and interviewing,” and “practical judgment.”¹⁹⁵ While clinical courses will typically expose students to these skills, it is rare—short of the famed “issue spotting exam” or the bar exam’s closed-universe Multi-State Practice Test—that students engage in any form of independent fact gathering in their law school studies.¹⁹⁶

More importantly for this discussion, though, Shultz and Zedeck also identified still more skills, ones that are rarely taught in traditional law school settings, like “problem solving,” “creativity/innovation,” “strategic planning,” “organizing and managing one’s own work,” “organizing and managing others,” “passion and

¹⁹¹ See generally Brescia, *supra* note 12, at 1 (listing the skills that are developed throughout the *Law and Social Innovation* course, including running a productive meeting and collaborating on document drafting and production).

¹⁹² See MARJORIE M. SHULTZ & SHELDON ZEDECK, IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING 24 (2008), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1442118.

¹⁹³ The twenty-six “effectiveness factors,” listed under what the authors call eight “umbrella categories,” include the following: (1) Intellectual and Cognitive (Analysis and Reasoning, Creativity/Innovation, Problem Solving, Practical Judgment); (2) Research and Information Gathering (Researching the Law, Fact Finding, Questioning and Interviewing); (3) Communications (Influencing and Advocating, Writing, Speaking, Listening); (4) Planning and Organizing (Strategic Planning, Organizing and Managing One’s Own Work, Organizing and Managing Others (Staff/Colleagues)); (5) Conflict Resolution (Negotiation Skills, Able to See the World Through the Eyes of Others); (6) Client and Business Relations—Entrepreneurship (Networking and Business Development, Providing Advice and Counsel and Building Relationships with Clients); (7) Working with Others (Developing Relationships within the Legal Profession, Evaluation, Development, and Mentoring); and (8) Character (Passion and Engagement, Diligence, Integrity/Honesty, Stress Management, Community Involvement and Service, Self-Development). *Id.* at 26–27.

¹⁹⁴ See *id.*

¹⁹⁵ See *id.*; see also John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 318 (2007) (listing legal skills for which the legal education system does not traditionally provide training).

¹⁹⁶ See Sonsteng et al., *supra* note 195, at 318 (“[T]he legal education system does not provide a significant source of training in . . . fact gathering[.]”).

engagement,” “diligence,” and “community involvement and service.”¹⁹⁷

Many problem-solving courses look to expose students to opportunities where they can hone a range of these skills, and my class is no different. Starting with some of the practical skills, students have opportunities to work in teams, engage in strategic planning, and learn to organize their own work and the work of others.¹⁹⁸

But apart from these types of skills, which can be learned in simulation courses and in other contexts like clinical courses, where my class diverges from the typical problem-solving course, and where it possesses qualities of clinical courses with live clients, is that it has students tackling problems in the real world, with real-world consequences, and live “clients” or partners. The next sub-Part shows how this departure from problem-solving classes that center on simulated problems allows students to explore some of the other Shultz and Zedeck lawyering skills in greater depth.

7. Tackling Real-World Problems with Real Partners, or, Why *Law and Social Innovation*?

Unlike in most problem-solving courses of which I am aware, students in LSI grapple with real-world problems.¹⁹⁹ In recent years, we have started with having the administration of the local city government, the City of Albany, as our core partner, and we have developed projects in collaboration with staff of the mayor’s office there.²⁰⁰ Where the work of the students became somewhat unwieldy in the first year of offering the class—because there was no overlap in the two projects between the subject matter and the partners—having the City of Albany as a core partner, choosing the projects and serving as the target audience of our policy recommendations, helped focus the students and enabled the class to see how the projects might

¹⁹⁷ See SHULTZ & ZEDECK, *supra* note 192, at 26–27. While one might not typically find such skills taught in most doctrinal courses in law school, clinical courses often incorporate opportunities for students to hone all or many of these skills. I have written about my personal experience as a law student honing these skills in a clinical course. See Raymond H. Brescia, *Through a Glass, Clearly: Reflections on Team Lawyering, Clinically Taught*, 61 N.Y. L. SCH. L. REV. 87 (2017).

¹⁹⁸ See Brescia, *supra* note 12, at 1.

¹⁹⁹ Understandably, some law schools might be reluctant to expose first-year students to real-world partners and settings, instead waiting until students reach their later class years to do so. LSI is only open to upper-level students, not first-year students.

²⁰⁰ See Press Release, *supra* note 145.

affect one another.²⁰¹ This past year, we expanded our partners to include the administration of another neighboring city: that of the City of Schenectady, a partnership that is continuing into the spring 2017 semester.²⁰² At the same time, we focused on a single project that affected both cities, so the substance of the final policy recommendations was the same for both partners.²⁰³

To this point, I have attempted to refer to the entities with which we work as “partners” rather than clients. This is intentional. While we inform these partners that the communications they have with us will be maintained as confidential and our policy recommendations to them will be treated as such unless they consent otherwise (which occurred in the spring 2016 semester), we go out of our way to ensure that we are not forming an explicit attorney-client relationship with our partners.²⁰⁴ Indeed, we stress that we are making policy recommendations only and do not pretend to substitute our judgment for that of the attorneys and other staff and advisors that the selected partners employ. Indeed, one of our reasons for choosing local governments as partners is that they have in-house counsel—their own corporation counsel offices—that provide direct legal advice to the mayors and their administrations.²⁰⁵

There are significant practical and pedagogical benefits to taking this approach. Primarily, we are in no risk of engaging in legal malpractice since we are not dispensing legal advice;²⁰⁶ we are merely making policy recommendations, even if some of those include analysis of legal doctrine or contain suggestions that a partner change local laws and/or ordinances or pursue changes to state law. There is no expectation that the student work will be the final word on any particular subject; rather, their recommendations will be reviewed by the partners’ policy *and* legal staff.

As for the pedagogical benefits, while the students and I must make sure their recommendations have a sound footing in law and

²⁰¹ *See id.*

²⁰² *See* Brescia, *supra* note 12, at 1.

²⁰³ *See* BEARESE ET AL., *supra* note 14, at 25.

²⁰⁴ *See generally* Stacy Lynn Newman, *The Governmental Attorney-Client Privilege: Whether the Right to Evidence in a State Grand Jury Investigation Pierces the Privilege in New York State*, 70 ALB. L. REV. 741, 751 (2007) (“An attorney-client relationship exists where there is a professional relationship between an individual or an entity and an attorney admitted to practice law . . .”).

²⁰⁵ *See* BEARESE ET AL., *supra* note 14, at 3.

²⁰⁶ *See generally* David J. Beck, *Legal Malpractice in Texas: Second Edition*, 50 BAYLOR L. REV. 605, 664 (1998) (“A cause of action for legal malpractice arises when a legal duty is breached . . . [and it] accrues when the client acts to his detriment on the attorney’s advice . . .”).

fact, the students know their recommendations are just that: they are recommendations, not formal legal advice, and any such recommendations are given not just to the principals of the partners (i.e., the mayors), but also their legal staff. The principals and their attorneys will make their own judgments as to how to proceed after receiving our recommendations and will conduct their own legal assessments of the students' advice. There is no risk that the student work will be adopted by the partners with no independent review of the legal, policy, and fiscal implications of their recommendations. In this way, there is little chance that the student work will have detrimental consequences for the client, as is always the risk in live-client clinical settings.²⁰⁷ As a result, the students have the benefit of having a real-world problem to solve without the risk that their recommendations will cause harm that is a product of malpractice. In this way, this work not only replicates a simulation, but also has substantial benefits that a simulation does not offer.²⁰⁸

One of those benefits is that the students are able to grapple with real-world problems in their "natural habitat." They are not relegated to working on a simulated problem and living within the constraints of their professor's imagination.²⁰⁹ The problem they face

²⁰⁷ See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 114 (2007), http://law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf. Of course, conscientious and effective supervision, supplied by countless faculty across the country, minimizes this risk, but it is always present.

²⁰⁸ See, e.g., *id.* at 132. That is not to say that law school classes that simulate live-client representation do not have pedagogical value. Recently, the American Bar Association ("ABA") revised its standards governing law schools to expand the required number of credits students must obtain prior to graduation in classes offering an experiential component. According to the ABA, a class in which students engage in simulations will qualify as satisfying this experiential requirement if such a course does the following:

[P]rovides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following: (i) direct supervision of the student's performance by the faculty member; (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and (iii) a classroom instructional component.

ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS Standard 304(a) (AM. BAR ASS'N 2016). Scholarship on the value of offering simulations also exists. See, e.g., Margaret M. Jackson, *From Seminar to Simulation: Wading Out to the Third Wave*, 19 J. GENDER RACE & JUST. 127, 136–52 (2016). At the same time, experiential classes that give students the opportunity to work with live clients provide additional pedagogical benefits. See, e.g., Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 278–81 (2000) (arguing that students must experience the complexity of live-client representation to understand the lawyer's role); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 493 (1995) (arguing for the "transformative effect" of live-client representation).

²⁰⁹ See *Simulations*, U. N.S.W., <https://teaching.unsw.edu.au/simulations> (last updated

is one the partner has identified as one it is facing and the students must explore the problem in all of its facets: political, personal, social, moral, ethical, and fiscal.²¹⁰ This makes for a much more enriching setting within which to explore the problem and a much more complicated environment in which to craft potential solutions. In all honesty, I could never devise a simulated problem that had so many facets, so much nuance, and so many issues to weigh and consider. This obviously makes for a much more difficult problem for students to address and try to solve, but it also is a more realistic replication of the problems they will face in the real world once in practice: because the problem they are addressing *is* a real-world problem, found in its natural environment. The scope of these problems is akin to the type of problems students will face once they enter the profession and must dispense advice that attempts to address such problems. As Paul Brest explains:

A client comes to a lawyer—rather than, say, an accountant, an engineer, or a psychologist—because the client perceives his problem to have a legal component. But most real-world problems do not conform to the neat boundaries that define and divide different disciplines, and a good lawyer must be able to counsel clients and serve their interests beyond the confines of his technical expertise—to integrate legal considerations with the business, personal, political, and other nonlegal aspects of the matter.²¹¹

In my class, precisely because the students are asked to solve real-world problems, they are more motivated to try to solve them. And because these problems arise close to home for many of the students, they are likely to feel even more of a desire to address them.

The real-world quality of the problems, and the fact that they always have a social component because they are embedded in their political and social contexts, requires an effective, innovative solution that will work in the real world. “Social innovation” has been described as “[a] novel solution to a social problem that is more effective, efficient, sustainable, or just than existing solutions and for which the value created accrues primarily to society as a whole rather than private individuals.”²¹² Students must look at the social

Sept. 10, 2015).

²¹⁰ See, e.g., BEARESE ET AL., *supra* note 14, at 1–2.

²¹¹ Brest, *supra* note 22, at 8; see also DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 2–3 (2d ed. 2004) (discussing how navigating these constraints and interests is the focus of effective, empathetic, client-centered lawyering).

²¹² James A. Phills Jr. et al., *Rediscovering Social Innovation*, STAN. SOC. INNOVATION REV.,

problems the partners have asked them to solve through this definitional lens, to come up with more “effective, efficient, sustainable[, and] . . . just” solutions to those problems.²¹³

But taking on real-world problems means, quite frankly, that students face real-world problems, warts and all. The work can be messy and unpredictable, as all real-world problems are. Students have to learn to become—to borrow the phrase from baseball great Lou Piniella when talking about playing in the sport—“comfortable with being uncomfortable.”²¹⁴ In other words, as with most work in the legal profession, and almost all work that is interesting and important, there is not always an easy answer and students must come to appreciate that this is a component of all problem solving.²¹⁵ Indeed, they would not be “problems” if there were easy solutions, and if just anyone could solve such problems, there would not be a need for a lawyer to address them. Thus, students learn by attempting to tackle real, thorny problems that solutions to such problems rarely come easily; students must apply themselves and push beyond their comfort zones. In the process of doing so, they can learn how to deal with uncertainty and setbacks, can develop resiliency in the face of both, and train themselves to work through such complex problems until they find an appropriate solution.²¹⁶

These challenges require not just hard work and the application of traditional legal skills, they also require broad thinking, an openness to new ideas, and a willingness to explore new domains.²¹⁷ In short, they require creativity, and teaching students how to tap into their creative sides is something LSI also attempts to do, which I describe

Fall 2008, at 34, 36; *see also* Peter Lee, *Social Innovation*, 92 WASH. U. L. REV. 1, 8–9 (2014) (discussing some of the definitional issues that surround the term).

²¹³ Phills Jr. et al., *supra* note 212, at 36; *see* Brescia, *supra* note 12, at 1.

²¹⁴ Michael Lewis, *Coach Fitz's Management Theory*, N.Y. TIMES MAG. (Mar. 28, 2004), <http://www.nytimes.com/2004/03/28/magazine/coach-fitz-s-management-theory.html>. As a young boy, I recall watching Lou Piniella make a game-saving catch in the late innings of a one-game playoff between the Yankees and the Red Sox, when such games were a rarity, unlike today. Piniella staggered under the blazing, blinding sun in the treacherous right field in Fenway to stab a low liner that could have turned the tide in the game. It could not have been a comfortable catch, but Piniella made it, and made it look easy. *See* RICHARD BRADLEY, *THE GREATEST GAME: THE YANKEES, THE RED SOX, AND THE PLAYOFF OF '78*, at 196 (2008).

²¹⁵ *See, e.g.*, Linda Morton, *Legal Education: Teaching Creative Problem Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375, 379 (1998); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 *Clinical L. Rev.* 445, 448–50 (2002).

²¹⁶ I would like to think that this type of approach is consistent with what psychologist Carol Dweck calls a “growth mindset”: an approach to challenges that sees them as opportunities to grow and learn. *See* CAROL S. DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* 6–7 (2006) (defining a growth mindset as compared to a “fixed” mindset).

²¹⁷ *See* Brescia, *supra* note 12, at 1.

next.

8. Teaching Creativity

Is it possible to “teach” creativity? What role does creativity play in lawyering? In problem solving? According to Shultz and Zedeck, creativity is one of the core lawyering skills they have identified,²¹⁸ but to what extent do we try to teach it in law school? Can law schools even teach it?²¹⁹

These are some of the questions I attempt to explore in LSI, which I have given the subtitle: “Creative Problem Solving.” All problem solving is creative problem solving because all problem solving requires creativity. If problem solving in a particular setting does not require creativity, it probably is not a very hard problem in the first place. Legal problem solving tends to require some degree of creativity, whether one is figuring out the best way to litigate a complex case, to put together a multi-party transaction, or to prepare a complicated contract or will.²²⁰ As Menkel-Meadow points out: “The creative legal problem solver . . . must learn to navigate within the seas of optimistic creativity, the swells of dynamic interaction with others (client and other counsel and parties) and the oceans of realistic legal possibility.”²²¹

In order to develop effective methods for solving problems, students have to learn how to develop expertise and mental models or “heuristics” for how to address the problems before them.²²² As professor Andrea Seielstad points out, studying problem solving in complex, real-world settings is the best way to develop these mental models that foster creative solutions.²²³

Therefore, in the class, the students review previous legal campaigns that sought to achieve solutions in creative ways, like the switch in emphasis of the marriage equality movement through which advocates sought to pivot from a rights-based approach to one that stressed the benefits of and barriers to same-sex marriage.²²⁴

²¹⁸ See SHULTZ & ZEDECK, *supra* note 192, at 25–26.

²¹⁹ See Donald A. Schon, *Educating the Reflective Legal Practitioner*, 2 CLINICAL L. REV. 231, 237 (1995) (discussing some aspects of this question).

²²⁰ See Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?*, 6 HARV. NEGOT. L. REV. 97, 102–03 (2001).

²²¹ *Id.* at 103.

²²² See Blasi, *supra* note 19, at 335.

²²³ See Seielstad, *supra* note 215, at 486.

²²⁴ See Brescia, *supra* note 12, at 2, 3; see also FREEDOM TO MARRY, MOVING MARRIAGE FORWARD: BUILDING MAJORITY SUPPORT FOR MARRIAGE 3–4, 6 (2011), http://freemarry.3cdn.net/cc86bd386cbe909dcd_z8m6bup0w.pdf (“[People] want to treat all couples *fairly*—but

But a course that seeks to help students learn how to be creative problem solvers will not attempt to define creativity in every context. Rather, it helps students explore how they can develop “muscle memory” for creative endeavors, to “learn how to learn” so to speak.²²⁵ As professor Larry Natt Gantt explains: “Educational and cognitive psychologists now recognize that problem solving transfer occurs best when instructors teach students generalizable principles and strategies that can be applied to various problems.”²²⁶

Research into the methods for tapping into creativity reveals that there are several well-worn approaches to doing so. One of these tools is a process known as brainstorming, which has been described in many contexts and is defined by professor Jennifer Gerarda Brown as “a somewhat formalized process in which participants work together to generate ideas” and which has “two important ground rules: participants [in a brainstorming session] agree not to evaluate the ideas while they are brainstorming, and they agree not to take ‘ownership’ of the ideas.”²²⁷ Carrie Menkel-Meadow has surveyed the literature and developed a taxonomy of the different approaches to devising creative solutions, of which brainstorming is just one.²²⁸ Others include what she calls:

Transfer ([the] cross-disciplinary use of concepts, ideas, information, [and] solutions from other fields); . . . Extension—extending a line of reasoning, principle or solution beyond its original purpose; . . . [and] Backward/forward thinking—focusing on how [one] came to a particular situation . . . in order to figure out how we get to desired end-state(s) . . .²²⁹

This array of processes can sometimes fall under the term “lateral thinking”: an approach, likely rooted in R-Directed thinking, for identifying patterns; moving beyond purely linear, analytical

they really may not yet be ready to embrace equality.”); Molly Ball, *The Marriage Plot: Inside This Year’s Epic Campaign for Gay Equality*, ATLANTIC (Dec. 11, 2012), <http://www.theatlantic.com/politics/archive/2012/12/the-marriage-plot-inside-this-years-epic-campaign-for-gay-equality/265865/> (describing the shift of the marriage equality campaign from using the language “gay marriage” or “same-sex marriage” to “marriage equality”).

²²⁵ Natt Gantt, II, *supra* note 5, at 708–09, 732–33, 750–51.

²²⁶ *Id.* at 711.

²²⁷ Jennifer Gerarda Brown, *Creativity and Problem-Solving*, 87 MARQ. L. REV. 697, 698 (2004).

²²⁸ See Menkel-Meadow, *supra* note 18, at 801–02.

²²⁹ Menkel-Meadow, *supra* note 220, at 122–23; see also BARRY NALEBUFF & IAN AYRES, WHY NOT?: HOW TO USE EVERYDAY INGENUITY TO SOLVE PROBLEMS BIG AND SMALL 135–37, 142–144 (2003) (providing a book-length exploration of these and other strategies for creative problem solving).

thought; and shifting mental paradigms.²³⁰

Professor Linda Morton has identified six facets of creative problem solving in the law as distinct from simple problem solving in this field as follows: “it focuses on underlying needs and interests . . . of individuals as well as society[;]” analyzes the “values inherent in the process[;]” including those of the individuals involved but also society as a whole; investigates disciplines and resources outside of the law for potential solutions; “requires modes of creative thinking not found in legal analysis alone[;]” places emphasis on problem prevention; and “requires conscious self-reflection and analysis[.]”²³¹

Applying some of these strategies, once the semester’s projects are chosen, the students begin to learn to explore the full range of constraints under which the partners are operating with respect to the selected projects. They undertake legal research on the subjects of the projects and conduct interviews of individuals within the partner entities, other stakeholders in the field, and leaders from across the state working on similar issues.²³² They then explore ways in which entities similar to the partners have acted in other jurisdictions in an attempt to understand what Steven A. Johnson calls “the adjacent possible”: potential avenues for change that exist in nearby environments where the conditions are similar to the existing environment and solutions have been tried and appear to be working effectively.²³³ In these ways, students look for what is sometimes called “positive deviance”: situations in which successful efforts have arisen in a similar environment where other attempts had failed.²³⁴ Such successful approaches can help illuminate a roadmap for success elsewhere, where similar conditions exist.

Once students identify potential successful approaches that our partners might choose to adopt, the students research the legal constraints that might inhibit that adoption.²³⁵ They must identify ways in which local, state, or federal law or regulations might prohibit our partners from taking such actions.²³⁶ If legal or regulatory constraints prevent these measures’ adoption, the

²³⁰ See EDWARD DE BONO, *SERIOUS CREATIVITY: USING THE POWER OF LATERAL THINKING TO CREATE NEW IDEAS* 15, 51–56 (1992); see also PINK, *supra* note 7, at 25–27, 39–40, 137–38 (discussing R-Directed thinking).

²³¹ Morton, *supra* note 215, at 378.

²³² See Brescia, *supra* note 12, at 1, 2, 4.

²³³ See STEVEN JOHNSON, *WHERE GOOD IDEAS COME FROM* 30–34 (2010).

²³⁴ See, e.g., Tim Brown & Jocelyn Wyatt, *Design Thinking for Social Innovation*, *STAN. SOC. INNOVATION REV.*, Winter 2010, at 31, 32.

²³⁵ See, e.g., BEARESE ET AL., *supra* note 14, at 41–43.

²³⁶ See, e.g., *id.*

students can make recommendations as to ways in which our partners can accept such constraints and modify the chosen approach to fit within the legal and regulatory environment or make suggestions for ways our partners can seek changes to that policy environment to permit the broad adoption of the approach.

In the spring 2016 semester, as students embarked upon an effort to understand the strategies two cities in Upstate New York could utilize to confront the growing problem of blight caused by vacant and abandoned homes,²³⁷ they began to look for examples of other cities with similar histories and demographics as Albany and Schenectady to explore ways in which such cities have attempted to address their own blight problems. After identifying about fifteen such cities that all had appeared to have had some success in addressing the problem of vacant and abandoned homes, the students made a preliminary presentation to representatives of the partners to identify the most promising practices from these other cities that might prove effective in our local communities.²³⁸

In light of the range of constraints under which our partners operate—for example, the cities do not have much in terms of resources to devote to such initiatives, the cities need to act quickly, and they cannot expend much effort²³⁹—the students searched for approaches that could have an impact at a relatively low cost in terms of financial and human capital.²⁴⁰ They developed a chart that attempted to map out approaches based on their relative impact, cost and effort, seeking to identify those interventions that were both high impact and low in cost and effort, while eliminating those that were costly, required extensive human capital, or were not likely to bring about positive change for our partner cities.²⁴¹

Our partners settled on certain actions taken by the cities of Buffalo, New York, and Youngstown, Ohio, that seemed to be high impact, not too costly for the cities, and required limited human resources: in other words, they were the types of approaches that were the most attractive and transferrable to the cities of Albany and Schenectady.²⁴² In addition to these cities' activities, several law

²³⁷ See Press Release, *supra* note 145.

²³⁸ See *generally id.* (discussing the students' presentation on the findings of their project and proposed solutions).

²³⁹ See BEARESE ET AL., *supra* note 14, at 8–9.

²⁴⁰ See *id.* at 22, 28–31.

²⁴¹ See PAUL BREST & LINDA HAMILTON KRIEGER, PROBLEM SOLVING, DECISION MAKING, AND PROFESSIONAL JUDGMENT: A GUIDE FOR LAWYERS AND POLICYMAKERS 33–112 (2010) (providing a taxonomy of some problem-solving approaches).

²⁴² Getting into the specifics of the student recommendations to the cities during the spring

students researched legal mechanisms under state law through which the cities could seize abandoned properties without resorting to eminent domain and the expense associated with paying landowners when condemning property in that way.²⁴³

In carrying out these activities, students address very specific problems, but learn processes for engaging in creative problem solving: they brainstorm, research “the adjacent possible,” search for “positive deviance,” and try to move their thinking outside of the well-worn tracks of conventional methods for finding solutions to engage with and tap into more creative impulses that lead to novel or more innovative solutions. They learn processes for mining their own creativity so they can tap into such processes when they enter the profession. The idea is not to help them understand how they can be creative in one particular context, but rather, to develop a facility with the tools of creativity so that they can apply them in whatever context they wish to harness innovative thinking.

9. Incorporating Interdisciplinary Approaches and Learning to Work in Interdisciplinary Teams

Because of the new affiliation between Albany Law School, which is a private, independent law school, and a local university, the University at Albany (“UAlbany”), which is part of a large public university system, the State University of New York (“SUNY”),²⁴⁴ in the spring 2016 semester, for the first time since offering the class, I was able to offer it to non-law students from UAlbany.²⁴⁵ The partnership for the class came about through contacts I was able to make thanks to the efforts of the administrations of the two institutions to bring faculty members together who shared similar interests.²⁴⁶ In one of these sessions, I had the good fortune of meeting Theresa Pardo, who runs UAlbany’s Center for Technology

2016 semester is beyond the scope of this article, and could probably fill one, if not several separate articles on their own. I will say only that in order for the partners to address urban blight and abandonment, the students came up with a range of tactics for their partners to deploy, from litigation based on an under-utilized mechanism under state law for addressing abandoned properties, to exploring creative ways of funding interventions for abandoned properties, like applying for support through the federal AmeriCorps program and applying the proceeds of the sale of assets seized through civil and criminal forfeiture proceedings connected to communities affected by abandonment, using a community-driven process for making disbursement and allocation decisions.

²⁴³ See BEARESE ET AL., *supra* note 14, at 2.

²⁴⁴ See Press Release, *supra* note 145.

²⁴⁵ See *id.*

²⁴⁶ See BEARESE ET AL., *supra* note 14, at 3.

in Government (“CTG”) and is a research professor with the university in several departments, including the Rockefeller College of Public Affairs and Policy and the Informatics department, which is part of the university’s new school of Engineering and Applied Sciences.²⁴⁷

Theresa and I discussed our shared interests in working with regional cities and she described a project on which CTG was working with several communities to help them rationalize and streamline their housing code enforcement practices. I told her of my past work with the City of Albany and we discussed the possibility of reaching out to Albany as well as Schenectady, a CTG partner on the code enforcement project, to see if there were ways we could work together to combine legal and technology research and assessments to help these cities address their growing blight problems. Once we reached out to the cities, they were quick to embrace the idea and we began recruiting law students from Albany Law and students from a range of departments and schools within UAlbany. We also teamed up with Meghan Cook, a program director at CTG, to co-teach the course as well. Because it was fairly late in the fall semester, and we were recruiting for the spring, we were only able to find two students from UAlbany to join four students from Albany Law. We told the students that this interdisciplinary effort was the first of its kind for the two schools (in fact, it is the only problem-solving course at an American law school of which I am aware that is explicitly interdisciplinary in nature) and we asked their indulgence because they would assist us in working through the kinks of such an experimental endeavor. The students seemed undaunted by that prospect, for which Theresa, Meghan, and I were grateful.

A critical component of the interdisciplinary research conducted by the students during the spring 2016 semester was the business process analysis described above.²⁴⁸ In conducting this research, the students, working in interdisciplinary teams, went beyond simple legal or policy analysis and developed an understanding of the real and practical impediments that stood in the way of the cities taking advantage of mechanisms for combatting blight and abandonment.²⁴⁹ The students all met with code enforcement officials, information technology technicians in the two cities, lawyers and policy staff, all to understand the different practical components of code enforcement

²⁴⁷ See *Theresa Pardo: Center Director*, CTR. FOR TECH. IN GOV’T, U. ALB., <https://www.ctg.albany.edu/about/about?sub=people§ion=theresa> (last visited Dec. 31, 2016).

²⁴⁸ See Press Release, *supra* note 145; *supra* Part III(B)(5), (B)(9).

²⁴⁹ See BEARESE ET AL., *supra* note 14, at 5; Press Release, *supra* note 145.

processes, including data collection, development, management, and retrieval.²⁵⁰ Just looking at one piece of data, if the cities could not properly identify all of the parties with an interest in a particular property, they could not bring a legal action against that property seeking a declaration of abandonment.²⁵¹

Moreover, even if a city wishing to bring an abandonment action could identify every party with an interest in a property, if the city did not possess information identifying a viable address for each party at which to effectuate service of process, a court entertaining any such action could not obtain personal jurisdiction over that party.²⁵² While the statute the cities might want to enforce might, on paper, seem to have the quality of a “magic bullet,” offering a simple means of legal recourse against an abandoned property, the students learned quickly that practical barriers impacted the ability of the cities to enforce the law.²⁵³

By working through the practical steps necessary to utilize the statute, and the data environment in which city personnel must operate should they want to enforce the statute, the students learned that the legal mechanism available to the cities faces real practical barriers, an insight gleaned from the interdisciplinary business process analysis the students completed. This taught them important insights into the practical constraints the cities face, even when they might have a seemingly effective tool for combatting blight at their disposal. It also taught them how to look at problems from different perspectives and disciplines, and to craft effective solutions. The only way they were able to do this was to form and work in interdisciplinary teams.²⁵⁴

The different components of the course are designed to put students in a position to develop their problem-solving skills.²⁵⁵ As a part of this process, they deploy Pink’s aptitudes of the Conceptual

²⁵⁰ BEARESE ET AL., *supra* note 14, at 1–2; Brescia, *supra* note 12, at 1, 4–5.

²⁵¹ *See* BEARESE ET AL., *supra* note 14, at 33.

²⁵² *See id.* at 15.

²⁵³ *See id.* at 15–21.

²⁵⁴ Scholarship on the value of interdisciplinary approaches in the law school curriculum is available. *See, e.g.*, Kim Diana Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 1 WASH. U. J.L. & POL’Y 11, 35–39 (2003); Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses as a Context for Nurturing Intrinsic Values*, 13 CLINICAL L. REV. 839, 840–62 (2007).

²⁵⁵ *See* Brescia, *supra* note 12, at 1.

Age.²⁵⁶ In this Part, I outlined different components of the class and how those components serve to meet the learning objectives of the course.²⁵⁷ In many ways, these components are geared toward offering students the opportunity to deploy Pink's aptitudes. In the next Part, I will attempt to describe the ways in which the students did that: applied the aptitudes of the Conceptual Age to their work.²⁵⁸ Indeed, looking back on the work of the class over the last few semesters, and despite the fact that the student projects were embedded not in abundance but scarcity (or perhaps because of that), the student projects have all been shaped in the shadow of these aptitudes.²⁵⁹ They have incorporated aspects of design, story, symphony, empathy, play, and meaning, each to a greater or lesser degree. I address each of these aptitudes, below, although not in this order.

C. The Intersection of Lawyering and Advocacy Skills and the Aptitudes of the Conceptual Age

In the LSI class, students have the opportunity to partner with municipalities in the community to help them solve real problems those entities face.²⁶⁰ Given the economic reality of life in Upstate New York at present, the communities that are the focus of the work face significant scarcity.²⁶¹ They are struggling to attract employers and residents, to strengthen their tax bases, to combat the effects of deindustrialization and blight, and raise sufficient capital to continue to function effectively and provide essential social services to their constituents.²⁶² The officials that lead these municipalities are often hard-pressed for the time and resources to address anything but the emergency situations that arise day in and day out.²⁶³ They find it challenging to identify, devise, and implement long-term solutions to some of the more intractable problems their communities face.²⁶⁴ Having additional resources in the form of free law and policy students and their supervising faculty to help to research and explore such solutions is of great benefit to them.²⁶⁵ At the same time, the

²⁵⁶ See *supra* Part II(A).

²⁵⁷ See *supra* Part III(A)–(B).

²⁵⁸ See *infra* Part III(C).

²⁵⁹ See *id.*

²⁶⁰ See Press Release, *supra* note 145.

²⁶¹ See BEARESE ET AL., *supra* note 14, at 5, 25.

²⁶² See *id.* at 4–5.

²⁶³ See *id.* at 8–9.

²⁶⁴ See *id.* at 11.

²⁶⁵ See Press Release, *supra* note 145.

solutions the students are able to design must take into account the budgetary and political realities these elected officials and their staffs face.²⁶⁶ Students must accept this reality and work within the constraints in which their partners operate. This is a win-win for the partners and the students; the partners receive tailored, meaningful, and actionable advice and the students learn how to address problems in real-world settings.

Given the constraints within which the students and their partners operate, the shadow lurking over all of the work is scarcity: i.e., limited financial resources; limited personnel to carry out and execute solutions; a need for urgent, timely action; and a populace desperate for real results in the face of significant social ills.²⁶⁷ All of these constraints point to the need to devise cost-effective, efficient, easily implemented solutions to critical problems that will enjoy popular support. Not abundance, but scarcity, is the frame within which all of this work takes place, and yet, as the students learn, the aptitudes of the Conceptual Age are useful to deploy in the service of identifying, presenting, and “selling” their ideas to their partner municipalities.

Of the aptitudes that are most relevant to the work, probably the one that helps the students to understand the constraints under which their partners operate, and helps to shape the solutions the students devise, is “empathy.”²⁶⁸ The students must work to understand these constraints from the partners’ perspectives and conduct their research in the shadow of these constraints. The clients could easily come up with pie-in-the-sky ideas, the cost of which would exceed anything the partners could afford, but the partners would simply reject such ideas and the student work would be for naught. Thus, by deploying the empathy aptitude, the students can appreciate all facets of the partners’ positions, and devise meaningful and customized strategies that those partners can adopt in pursuit of problem-solving solutions.²⁶⁹

²⁶⁶ See BEARESE ET AL., *supra* note 14, at 5.

²⁶⁷ See *id.* at 4–5.

²⁶⁸ See PINK, *supra* note 7, at 158–60.

²⁶⁹ Scholarship on community lawyering has long stressed that effective lawyering incorporates client voice and problem-solving skills. See, e.g., Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 76 (2000); Gerald P. Lopez, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 11 (1989); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 4–5 (1990); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 544 (1987–88).

When devising those solutions under a situation marked by scarcity (of financial resources, personnel, time, and political will), the students also have to incorporate other aptitudes as well in an effort to capture the imagination of the partners and engage them in ways that help them appreciate the value of the solutions the students have crafted. To accomplish this, students must incorporate both notions of “design” and “storytelling” in their work.²⁷⁰

“Design” involves creating something beautiful or engaging.²⁷¹ When experts talk about solutions or theories, they often admire something that is “elegant.”²⁷² In legal problem solving, elegant solutions can be those that are fine-tuned to fit a given situation, often simple but effective, and implemented with some level of ease: i.e., not cumbersome or costly to adopt.²⁷³ Given a state of scarcity, elegantly designed solutions are those that can capture the imagination, engage the client or target audience, and respond to constraints by working within them while, at the same time, achieving the client’s ends despite those conditions.²⁷⁴ Engagement and elegance are no less important in a state of scarcity than they are in a state of abundance; indeed, they may be more important, as scarcity becomes a constraint on its own, hemming in the possible solutions yet, at the same time, narrowing the range of options, making solutions, at times, easier to devise.²⁷⁵

One of the main ways to get design right is to incorporate the idea of “design thinking.”²⁷⁶ This approach to innovation can take many forms and has been described as having four main components: inspiration; synthesis; ideation and experimentation; and implementation.²⁷⁷

²⁷⁰ See PINK, *supra* note 7, at 65–66.

²⁷¹ See *id.* at 65.

²⁷² See generally R. M. Auerback & D. A. Sullivan, *Can Practitioners and the Courts Work in Tandem?*, 8 J. INT’L BANKING & FIN. L. 358 (2001) (“[There is a] lawyer’s instinct to achieve the best and most elegant legal solution to legal problems . . .”); Daniel R. Coquillette, *Legal Ideology and Incorporation IV: The Nature of Civilian Influence on Modern Anglo-American Commercial Law*, 67 B.U. L. REV. 877, 967 (1987) (discussing how students can learn to arrive at elegant legal solutions).

²⁷³ See Michael D. Murray, *The Great Recession and the Rhetorical Canons of Law and Economics*, 58 LOY. L. REV. 615, 645 (2012).

²⁷⁴ See, e.g., *id.* (“[W]hen . . . efficiency produces elegant and effective formulae that are substantively correct, this promotes . . . understanding and persuasion . . .”).

²⁷⁵ See, e.g., *id.* (“Non-economists can appreciate the persuasiveness of an elegant formula and a simple solution because this mode of presentation promotes clarity and openness, revealing the workings and falsifiability of the underlying reasoning.”).

²⁷⁶ See TOM KELLEY & DAVID KELLEY, *CREATIVE CONFIDENCE: UNLEASHING THE CREATIVE POTENTIAL WITHIN US ALL* 24–25 (2013).

²⁷⁷ See *id.* at 22–24; see also TIM BROWN, *CHANGE BY DESIGN* 3–4 (2009) (describing design thinking); Tim Brown, *Design Thinking*, HARV. BUS. REV., June 2008, at 84, 88–89 (describing

At the inspiration phase, in order to spark design-centered innovation that will stick, one “interact[s] with experts, immerse[s] oneself] . . . in unfamiliar environments, and role-play[s] customer scenarios.”²⁷⁸ During this component of the creative process, “connecting with the needs, desires, and motivations of real people helps to inspire and provoke fresh ideas.”²⁷⁹ When synthesizing these ideas, one identifies patterns and themes, and “find[s] meaning in all that [has been] . . . seen, gathered, and observed.”²⁸⁰ In the ideation and experimentation phase, one identifies the most promising ideas and field tests them through rapid prototyping: “early, rough representations of ideas that are concrete enough for people to react to.”²⁸¹ These reactions are then fed back into the creation loop to iterate and test new ideas. Through the receipt of feedback and conversion of that feedback into modification to existing models, one can “adapt, iterate, and pivot . . . to[ward] human-centered, compelling, workable solutions.”²⁸² Finally, after going through these early phases and maybe repeating some of them, one can come to the implementation phase, where ideas are introduced into a market, sometimes in phases, sometimes in experiments, that continue to generate feedback and modification of the working designs.²⁸³

Such a design thinking approach to creative problem solving can seemingly gain traction in the context where legal and policy solutions are sought for intractable social problems.²⁸⁴ By incorporating client voice and the client perspective, by brainstorming creative solutions while taking into account the constraints under which the client operates, by experimenting and field testing potential solutions in a feedback loop that helps to refine

design thinking). This is similar to Linda Morton’s model for creative problem solving in the law, which includes identification of the problem, understanding it, posing solutions, choosing solutions, implementing solutions, and engaging in a final analysis of such solutions. See Morton, *supra* note 215, at 376–77. The ABA, in its 1992 report, identifies several technical steps related to problem solving as well, including identifying the problem, generating solutions, developing and implementing a plan of action, and remaining open to new information and ideas. See MACCRATE REPORT, *supra* note 21, at v, 141–48.

²⁷⁸ KELLEY & KELLEY, *supra* note 276, at 22.

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 23.

²⁸¹ *Id.*

²⁸² *Id.* at 23–24.

²⁸³ See *id.* at 24.

²⁸⁴ See Tim Brown, *Why Social Innovators Need Design Thinking*, STAN. SOC. INNOVATION REV. (Nov. 15, 2011), https://ssir.org/articles/entry/why_social_innovators_need_design_thinking; see also Paul Brest et al., *Problem Solving, Human-Centered Design, and Strategic Processes*, STAN. CTR. ON PHILANTHROPY & CIV. SOC’Y, <http://pacscenter.stanford.edu/wp-content/uploads/2015/09/Download-the-full-article-here.pdf> (last revised Oct. 19, 2015) (discussing the intersection of problem solving and design thinking).

those solutions to meet the constraints and realities that a client faces, and by rolling out meaningful solutions in a manner that addresses the most pressing client problems in effective ways, lawyers acting as problem solvers can devise customized solutions to client problems that are workable and engaging, incorporate the client's perspective in a meaningful way, and likely lead to more effective solutions that will leave the client more satisfied.²⁸⁵

In their course work, particularly in their presentations to their community partners, the students need to pique the interest of those partners and articulate their problem-solving solutions in ways that are compelling and capture the imagination of those partners. They also need to engage with the partners throughout the creative process to ensure the partners' voices and constraints are taken into account, otherwise any solutions the students devise could end up being unworkable and ineffective. To engage with the partners' perspectives, the students not only interview a range of officials from the community partners to get their ideas and to understand the constraints under which they operate, but they also observe the processes the partners utilize to carry out the extant strategies for addressing blighted properties.²⁸⁶ As the students research potential solutions and methodologies for realizing those solutions, they introduce their ideas and their processes to the community partners throughout the semester, to explore the extent to which those solutions are workable within the partners' constraints.²⁸⁷ They field test ideas and present different options to the partners so that the partners can consider them and explore the ways in which such options could play out in the policy environment and fine tune them to the needs and constraints of the partners.²⁸⁸ This process is experimental, iterative, and empathetic, recognizing that any solutions have to be workable and practicable, as well as cost effective and impactful.

While engaging in this design thinking, iterative process, the students also incorporate aspects of "story" and "empathy" as well as "design."²⁸⁹ Primarily, they need to empathize with their partners,

²⁸⁵ See Margaret Hagan, *Design Thinking and Law: A Perfect Match*, L. PRAC. TODAY (Jan. 2014), http://www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/2014/january14/design-thinking-and-law.html (discussing how lawyers can incorporate design thinking into their practice); see also Brown & Wyatt, *supra* note 234, at 32 (describing using design thinking to spark social innovation).

²⁸⁶ See BEARESE ET AL., *supra* note 14, at 1–2, 12.

²⁸⁷ See Press Release, *supra* note 145; Brescia, *supra* note 12, at 1, 5.

²⁸⁸ See BEARESE ET AL., *supra* note 14, at 1, 44.

²⁸⁹ See PINK, *supra* note 7, at 65–66, 70, 103, 139.

understanding that, for the most part, the students need to identify strategies that are both low cost and represent cost savings for the municipalities.

In the spring 2016 semester, using national studies and the partners' own research, the students calculated the estimated cost to the cities and their constituents due to the presence of abandoned properties.²⁹⁰ As national studies have shown, the presence of vacant properties requires local governments to address criminal activity, arson, and even maintenance problems like unkempt lawns that can harbor vermin and create problems for neighboring properties.²⁹¹ Abandoned properties and foreclosures can reduce the value of neighboring properties, even those that are occupied.²⁹² That reduction in property values can translate into lower appraisal values and lower property taxes, further impacting municipal coffers.²⁹³ Understanding the real financial strain under which their local government partners operated,²⁹⁴ the students empathized with the partners by highlighting the costs associated with those vacant properties and the necessary cost-savings that the cities might realize by addressing them.²⁹⁵ The students also looked at potential solutions to the problem and attempted to capture what undertaking those solutions would accomplish for the partners. They attempted to compose a narrative about the positive results that would arise if such solutions were adopted, including lowering the cost of policing vacant properties, increasing the tax base, and fostering more economic development.²⁹⁶ Similarly, through their business process analysis described above, the students told a story about municipal agencies that were not communicating effectively and failing to share information in ways that were efficient and could aid the partners in their oversight of vacant properties as well as their efforts to address those properties.²⁹⁷

²⁹⁰ See BEARESE ET AL., *supra* note 14, at 5–7, 9–10.

²⁹¹ See JONATHAN SPADER ET AL., JOINT CTR. FOR HOUS. STUDIES, HARVARD UNIV., FEWER VACANTS, FEWER CRIMES? IMPACTS OF NEIGHBORHOOD REVITALIZATION POLICIES ON CRIME 4–5 (2015), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w15-7_spader_et_al.pdf; VACANT PROPS. RESEARCH NETWORK, METRO. INST. AT VA. TECH & ECONSULT SOLS., INC., CHARTING THE MULTIPLE MEANINGS OF BLIGHT 5 (2015), https://www.kab.org/sites/default/files/Charting_the_Multiple_Meanings_of_Blight_FINAL_REPORT.pdf.

²⁹² See VACANT PROPS. RESEARCH NETWORK, *supra* note 291, at 5.

²⁹³ See WILLIAM C. APGAR ET AL., HOMEOWNERSHIP PRES. FOUND., THE MUNICIPAL COST OF FORECLOSURES: A CHICAGO CASE STUDY 10, 11 (2005), <http://www.issuelab.org/resources/1772/1772.pdf> (discussing the impact on municipalities of foreclosed, vacant, and abandoned homes).

²⁹⁴ See BEARESE ET AL., *supra* note 14, at 6, 7, 8.

²⁹⁵ See *id.* at 8–10, 25, 27–28, 31–32.

²⁹⁶ See *id.* at 16, 25, 27, 30–32.

²⁹⁷ See *id.* at 19; *supra* Part III(B)(5); see also Kermit J. Lind, *Strategic Code Compliance*

Other stories students have tried to tell about their proposed solutions have included the following: encouraging the City of Albany to increase its “coolness” factor by expanding food truck options in the city as a way to lure young professionals, members of the so-called “Creative Class,” to the city; assessing ways the city could be more “green,” including expanding bike lanes and pedestrian thoroughfares; and identifying ways the City of Albany could both lower its carbon footprint and contribute to strategies designed to address climate change, while also reducing maintenance costs, by switching to more energy efficient street lamps. In these instances, the students encouraged city officials to be forward looking, to consider ways to not just save funds but also present the city as cutting edge and creative, which, it was believed, would serve as a means of attracting and retaining individuals and families looking to live in a community that was more conscious of environmental concerns, livable, and affordable. These pragmatic solutions were embedded in a narrative, one that offered city officials a way to see not just the future, but also themselves: i.e., as creative and thoughtful, cost-conscious and savvy, and mindful of the emerging needs of an evolving electorate.²⁹⁸

In more prosaic terms, the students incorporated design, story, and empathy in simple ways as well, like sprinkling their presentations with photographs, charts, graphs, and maps. These are helpful in capturing the partners’ attention, but also help to tell the story the students are trying to convey.²⁹⁹ For example, the students used maps of the locations of vacant properties in the cities to highlight two powerful facts about vacant properties located within city limits: first, that many vacant properties could be found in certain neighborhoods within the cities (i.e., the more impoverished ones); and, second, that they could be found throughout the cities, and were

Enforcement: A Prescription for Resilient Communities, in *HOW CITIES WILL SAVE THE WORLD*, *supra* note 147, at 209, 221–29 (discussing the value of strategic, comprehensive, coordinated code enforcement efforts).

²⁹⁸ See RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS: AND HOW IT’S TRANSFORMING WORK, LEISURE, COMMUNITY AND EVERYDAY LIFE* ix, x (2002) (describing the interests and needs of the “Creative Class,” a term coined by Richard Florida).

²⁹⁹ Storytelling also has a role in creativity. According to Professor Richard Delgado, storytelling is a vehicle for divergent, creative thinking that often challenges the status quo: “Stories, parables, chronicles, and narratives are powerful means for destroying mindset—the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place.” Richard Delgado, *Legal Storytelling: Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413 (1989).

not just located in isolated areas.³⁰⁰ This meant that everyone in the cities was affected by vacant properties, not just residents of select neighborhoods.

To marshal the resources necessary to analyze the problems the partners face and to devise solutions to those problems, the students also need to master the art of “symphony”: seeing the big picture and coordinating efforts to address the issues they are asked to address.³⁰¹ Over the course of several years, different students have brought their own talents and experiences to their group projects: e.g., a student with a business background and a Master’s in Business Administration who could help with market research or students capable of data analysis who could engage in an assessment of partner business processes. They deployed their legal skills in order to conduct the necessary research and interviewed practitioners in the field to develop an understanding of how the problems they were attempting to address were playing out on the ground.³⁰² Those students also needed to work collaboratively, both within their teams and outside of them, to coordinate their research and present viable solutions in engaging and effective ways. In these ways, by executing on the aptitude of symphony, the students need to carry out many of the Shultz and Zedeck effectiveness factors, including the following: problem solving, researching the law, fact finding, questioning and interviewing, listening, strategic planning, managing one’s work and the work of others, the ability to see the world through the eyes of others, and community service.³⁰³

In order to motivate the students toward the goal of finding solutions to thorny, weighty problems, the students are generally encouraged to see the big picture, not just as part of symphony, but also in an effort to find “meaning,” another of the aptitudes of Pink’s Conceptual Age.³⁰⁴ For many of the students, finding the solutions to the problems the municipalities face is personal. They live in the cities they are helping and many expect to live and/or work within those cities once they graduate.³⁰⁵ They understand the issues they are tackling as issues critical to the viability of the cities over the long

³⁰⁰ See BEARESE ET AL., *supra* note 14, at 8, 10.

³⁰¹ See PINK, *supra* note 7, at 66.

³⁰² See BEARESE ET AL., *supra* note 14, at 12.

³⁰³ See SHULTZ & ZEDECK, *supra* note 192, at 26–27.

³⁰⁴ See PINK, *supra* note 7, at 66–67.

³⁰⁵ See, e.g., NAT’L ASS’N FOR LAW PLACEMENT, ALBANY LAW SCHOOL CLASS OF 2015 SUMMARY REPORT 5 (2016), <http://www.albanylaw.edu/careers/employment-statistics/documents/class%20of%202015%20summary%20report.pdf> (noting that almost eighty-nine percent of Albany Law School’s Class of 2015 stayed in New York State upon graduation).

term, like finding ways to address hundreds of vacant buildings, or making these cities more livable, bikeable, and walkable.³⁰⁶ Through frequent meetings with city officials, the students understand that the municipal governments are really struggling with the issues on which the students are working and that the solutions the students are devising are ones the partners are eager to receive. The student projects are not “make work,” hatched in their professor’s office; these are real-world problems requiring real-world solutions. If the students work hard enough on devising effective solutions, there is a good chance the cities will adopt them. These factors all help motivate the students to apply themselves to the tasks at hand: what they are doing matters. Moreover, because of the bonds of empathy they forge with the community partners, they do not want to let them down by producing sub-par work.³⁰⁷ All of this helps give the work meaning and serves as strong impetus for the students to apply themselves with zeal to the problems at hand.

Behavioral economist Dan Ariely and other researchers embarked on a study of motivation, to understand the forces that drive individuals to perform their best and in a sustained fashion.³⁰⁸ In one experiment, subjects were first handed sheets of paper and asked to study and complete word game tasks set forth on them.³⁰⁹ They were paid for their work based on the number of sheets they turned in, with the pay diminishing with each sheet submitted.³¹⁰ One group of students was informed that their work would be reviewed by a supervisor, another group simply submitted the sheets (which were not reviewed), and a third group had its sheets shredded in front of its members.³¹¹ In another set of experiments, subjects were asked to assemble toys and would be paid for each toy they put together, again, with the compensation diminishing for each subsequent toy

³⁰⁶ See, e.g., N.Y. STATE CAPITAL REGION REG’L ECON. DEV. COUNCIL, DOWNTOWN REVITALIZATION INITIATIVE GUIDE 8, 9, 11, 12, 14 (2016), <http://www.ny.gov/sites/ny.gov/files/atoms/files/Albany.pdf> (discussing how Albany’s addition of bikeable and walkable areas along with the renovation of abandoned buildings has increased job growth and provides support for future development in the area); see also BEARESE ET AL., *supra* note 14, at 1–2, 30, 31 (focusing on the issues of urban blight in Albany and Schenectady, specifically the ways in which vacant buildings contribute to the decay).

³⁰⁷ See, e.g., Ann Juergens, *Teach Your Students Well: Valuing Clients in the Law School Clinic*, 2 CORNELL J. L. & PUB. POLY 339, 343 (1993) (“Allowing the student to take responsibility for a client’s case . . . [allows the] student [to] learn[] how to exercise judgment as an attorney by experiencing the *consequences* of personal judgments.”).

³⁰⁸ See Dan Ariely et al., *Man’s Search for Meaning: The Case of Legos*, 67 J. ECON. BEHAV. & ORG. 671, 671 (2008).

³⁰⁹ See *id.* at 672.

³¹⁰ See *id.*

³¹¹ See *id.* at 673.

that was assembled.³¹² One group had its completed toys displayed after the members were finished with them; a second group had its toys disassembled as soon as they were completed, with the disassembled toys returned to the subjects to complete once again later in the experiment.³¹³ In both settings in which the work of the subjects was ascribed some meaning—i.e., the work was reviewed or the final product displayed—the subjects were able to sustain their motivation for longer periods of time than the subjects whose work was ignored or discarded.³¹⁴ This prompted Ariely and his colleagues to conclude that “meaning, at least in part, derives from the connection between work and some purpose, however insignificant or irrelevant that purpose may be to the worker’s personal goals. When that connection is severed, when there is no purpose, work becomes absurd, alienating, or even demeaning.”³¹⁵

Given the meaning the students in LSI place on the importance of the work they undertake in the class, and the considerable weight of the work that arises as a result of that meaning, it is sometimes difficult to incorporate notions of the final aptitude of the Conceptual Age: “play.”³¹⁶ Especially as the semesters unfold and near their natural end, and the necessary end of their projects, students (and their instructors), can feel the stress of looming deadlines and the desire to complete the projects in a timely way, while producing the best work possible.³¹⁷ In these ways, some of the aptitudes can be in tension, like meaning and play. Students can feel the pressure from both intrinsic and extrinsic forces: the desire to offer viable, effective solutions that feature elements of design and story and other components as well as to achieve a good grade for the semester’s work. The desire to satisfy partners and to continue to have them see the law school as a useful ally in community endeavors also exerts pressure on faculty, which can filter down to the students. Nevertheless, students and faculty often attempt, to the best of their abilities, to keep the focus on maintaining a level of lightheartedness that allows the work to unfold and the teams to function well.

³¹² *See id.* at 673–74.

³¹³ *See id.* at 675.

³¹⁴ *See id.* at 674, 675.

³¹⁵ *Id.* at 676.

³¹⁶ *See* PINK, *supra* note 7, at 185–205.

³¹⁷ *See, e.g.,* Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students*, 36 CONN. L. REV. 353, 379 (2004).

This Part has explored the course *Law and Social Innovation: Creative Problem Solving* in detail and has described the ways in which Pink's theories come to life for the students as they attempt to grapple with real-world legal and social problems identified by community partners. The students engaged with these problems are able to put the aptitudes of the Conceptual Age into practice. But is such an exercise relevant to legal problem solving in general and will it prepare students for the practice of law in the current milieu and the legal profession of the future? In some ways, the skill of creative problem solving is not new. In the ABA study on legal education from the early 1990s, the authors found that the components of legal problem solving incorporate, implicitly and explicitly, many of the different aptitudes of the Conceptual Age as they go about their business.³¹⁸ The report describes the "skill" of legal problem solving as follows:

[T]he skill of problem solving includes certain other conceptual skills that are crucial for the effective application of virtually all of the skills analyzed in th[is] Statement[,] . . . [t]he first of these is the skill of creativity. Whether the task at hand is the generation of possible solutions and strategies for solving a client's problem, the formulation of legal or factual theories, or the conceptualization of the subject of a negotiation, competent lawyering requires a person with a creative mind—a person who is willing to look at situations, ideas, and issues in an open[-]minded way; to explore novel and imaginative approaches; and to look for potentially useful connections and associations between apparently unrelated principles, facts, negotiating points, or other factors.³¹⁹

Still, much has changed in the practice of law in the last twenty-five years.³²⁰ The next Part explores the extent to which lawyers can or should incorporate these aptitudes and skills into their work, should they attempt to adjust to the contemporary and evolving legal needs of clients and communities.

³¹⁸ See MACCRATE REPORT, *supra* note 21, at 149.

³¹⁹ *Id.* at 150 (internal citations omitted).

³²⁰ See Jack A. Guttenberg, *Practicing Law in the Twenty-First Century in a Twentieth (Nineteenth) Century Straightjacket: Something Has to Give*, 2012 MICH. ST. L. REV. 415, 416 (2012).

IV. THE LEGAL PROFESSION IN THE CONCEPTUAL AGE

For Pink, the hallmarks of contemporary times, at least prior to the Great Recession, were outsourcing, automation, and abundance.³²¹ These forces are set to threaten traditional economic arrangements and are shaping the employment prospects within the U.S. According to Pink, American workers must be able to do something cheaper and faster than competitors and to do it in a way that satisfies non-material desires as well.³²²

In the current economic and social setting in which the legal profession finds itself, the abundance Pink describes is not always present. From the consumer's perspective, technology is making some access to legal assistance easier and more affordable, however.³²³ Abundance in the legal services context often means that consumers have more and more affordable options than simply turning to a traditional lawyer who charges traditional rates for his or her services.³²⁴ In order to compete in this new, technology-enabled era of greater access to some degree of legal assistance, what are strategies that lawyers can take to address automation, cost-consciousness, and commoditization to continue to serve their clients in an effective and efficient way? At the same time, the fact that clients seem to be more cost-conscious than ever before,³²⁵ and have more choices through which they can fill their need for legal assistance,³²⁶ are there other "transcendent" desires, as Pink describes them,³²⁷ that the lawyer may satisfy that go beyond the role of the functionary, pushing papers and filling out and filing forms? In this Part, I turn to the question of whether Pink's aptitudes of the Conceptual Age can help inform the future of the legal profession and the manner in which legal services are delivered in the twenty-first century.

The legal profession needs strategies to address the present disruption in the legal services industry. In addition, there are also ways that commoditized, sometimes automated, legal assistance does not bring the full range of value an attorney can bring to the attorney-client relationship. Pink's entreaty—to do something that overseas

³²¹ See PINK, *supra* note 7, at 46–47.

³²² See *id.* at 33.

³²³ See *id.* at 45–46.

³²⁴ See MACCRATE REPORT, *supra* note 21, at 47; PINK, *supra* note 7, at 51.

³²⁵ See Suchman, *supra* note 101, at 864.

³²⁶ See MACCRATE REPORT, *supra* note 21, at 47; see also Sheppard, *supra* note 78, at 1813–15 (discussing the predicted expansion of legal products and information to consumers).

³²⁷ See PINK, *supra* note 7, at 51.

workers cannot do cheaper, that computers cannot do faster, and that satisfies non-material desires³²⁸—as applied to the legal profession, might be as follows: the lawyer’s survival today depends on being able to do something that satisfies the core legal needs of the American consumer in a convenient and affordable way while engaging that consumer to satisfy his or her non-material, non-functional desires.³²⁹

The legal profession seems squarely in the midst of significant challenges to its continued viability as presently constituted due to the threats described above, which are, in some ways, the threats Pink outlines as the features of the Conceptual Age.³³⁰ How might the aptitudes of that age help the legal profession address the disruption currently taking place in the legal services market? I turn to this question next.³³¹

A. *Empathy*

Probably the most significant aptitude lawyers need to confront the threats to the legal profession is “empathy,” which, in the current environment, means an empathy for client needs and an understanding of how the current means of delivering legal services is not meeting a significant percentage of the legal needs of many consumers.³³² Probably the greatest reason lawyers are unable to meet client needs is that the clients cannot afford those lawyers’ services;³³³ to a lesser extent, the client is unaware of how to access a

³²⁸ See *id.*

³²⁹ See David Luban, *Optimism, Skepticism, and Access to Justice*, 3 TEX. A&M L. REV. 495, 504, 507 (2015) (suggesting that there are some things that traditional lawyers can do better than other alternatives, including using emotional intelligence to understand the client’s and his or her problem, utilizing dialogic rationality to craft a customized solution for the client, and deploying creativity to solve the client’s problem).

³³⁰ See *id.* at 503–04; see also PINK, *supra* note 7, at 51 (describing the Conceptual Age).

³³¹ Once again, Pink is by no means the first or only commentator to suggest that these skills and aptitudes are those that professionals can deploy to better meet their clients’ needs, and other works on these concepts exist. See, e.g., TOM KELLEY & JONATHAN LITTMAN, *THE ART OF INNOVATION: LESSONS IN CREATIVITY FROM IDEO, AMERICA’S LEADING DESIGN FIRM* 13–14 (2001) (describing the use of creativity to address client and customer needs); JEREMY RIFKIN, *THE EMPATHIC CIVILIZATION: THE RACE TO GLOBAL CONSCIOUSNESS IN A WORLD IN CRISIS* 1, 183 (2009) (describing the role of empathy in addressing forces such as greater globalization).

³³² See John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 332, 333, 336 (2008).

³³³ See Guttenberg, *supra* note 320, at 448. There are reasons as to why American consumers do not access lawyers to address their legal problems. See SANDEFUR, *supra* note 34, at 12–13; AM. BAR ASS’N, *LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS: MAJOR FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY 2* (1994), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/downloads/legalneedstudy.authcheckdam.pdf.

lawyer's services, or even that he or she has a legal problem in the first place.³³⁴ The monopoly that lawyers have enjoyed on the provision of legal services and the fact that the legal profession has been, consistently, a fairly lucrative field, have meant that many in the legal profession have not had to consider more creative ways of meeting client needs.³³⁵ With the advent of the Internet and social media, the legal profession has found new ways of advertising its services, but still a “justice gap” remains: the fact that many cannot afford legal services and, even if they might afford such services, many do not know where to turn to access them.³³⁶

This state of affairs requires the legal profession to rethink how it markets and delivers legal services. Technology may hold out the promise of making that marketing and delivery easier. There is no doubt that intrepid new entrants into the legal services market are harnessing the power of the Internet to not just market their services but deliver them as well.³³⁷ The legal profession has adapted to this new environment to a certain extent in that many law firms likely understand that they must have a website that provides information about the firm—its practice areas, the lawyers who work there, its victories—as well as a means of contacting the firm or the individual lawyers at the firm.³³⁸ Non-profit legal services providers have undertaken similar efforts, creating a network of websites, with each site in the network dedicated to a particular state. Known as “LawHelp,” this network provides information to potential clients about the availability of legal services in their communities, how to access them, and eligibility criteria.³³⁹

³³⁴ See Raymond H. Brescia, *Uber for Lawyers: The Transformative Potential of a Sharing Economy Approach to the Delivery of Legal Services*, 64 BUFF. L. REV. 745, 774–75 (2016) [hereinafter Brescia, *Uber for Lawyers*]; Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. L. REV. 553, 588 (2015) [hereinafter Brescia et al., *Embracing Disruption*].

³³⁵ See Tigran W. Eldred & Thomas Schoenherr, *The Lawyer's Duty of Public Service: More Than Charity?*, 96 W. VA. L. REV. 367, 398 (1994).

³³⁶ See Guttenberg, *supra* note 320, at 448; see also Brescia, *Uber for Lawyers*, *supra* note 334, at 745, 774–75 (noting that the advances in new technology have the ability to transform the legal profession but also that clients are still largely unaware of the availability of legal services); Brescia et al., *Embracing Disruption*, *supra* note 334, at 595 (“Programs across the country have developed innovative service delivery models that can spread resources to the greatest number of recipients possible, yet the justice gap still remains . . .”).

³³⁷ See, e.g., Brescia, *Uber for Lawyers*, *supra* note 334, at 759 n.26 (“For example, the ‘Oh Crap App’ can link clients to lawyers through a smartphone application, even as they are stopped at the side of the road in a traffic stop.”).

³³⁸ See ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 10-457 (2010).

³³⁹ *About LawHelp.org*, LAWHELP.ORG, <http://www.lawhelp.org/about-us> (last visited Feb. 5, 2016).

Understanding that many consumers likely get a wide range of information from the Internet about many legal issues is a critical first step in the legal profession developing empathy for the client;³⁴⁰ the next will involve borrowing a page from some of the new entrants to the legal services market and trying to make a wider range of information available on the Internet so that consumers can have a base of legal knowledge from which they can order their affairs without the assistance of a lawyer, or obtain enough information so that they can understand they have a legal problem in the first place.³⁴¹ This information should not serve as a substitute for a lawyer except in those very limited circumstances when a small amount of information might provide the guidance a customer needs to resolve his or her legal question without a great deal of legal assistance. Lawyers should empathize with the desire of the client for simple information at low or no cost, and if such information can be delivered easily enough through an Internet-based portal, the lawyer should offer such information in this fashion.³⁴² With an ethical obligation to make sure legal assistance is available to everyone regardless of their ability to pay—a requirement stemming from the monopoly on the right to deliver legal assistance—providing such free assistance where possible should be a fundamental component of empathizing with the needs of clients.³⁴³

Apart from simply making certain basic information available for free, the legal profession should explore ways to inform consumers of the situations in which limited services are effective in meeting their needs and strive to supply such services in efficient ways that satisfy the client's needs while fully protecting his or her interests. Like with the provision of free information, the legal profession should seek out opportunities where it can deliver services effectively through commoditized, automated means and, in this way, compete with non-legal services providers that are looking to displace the role of the

³⁴⁰ See Brescia, *Uber for Lawyers*, *supra* note 334, at 745; see also Jayne Reardon, *Embrace the Empathy Piece*, 2CIVILITY BLOG (Oct. 14, 2014), <https://www.2civility.org/embrace-empathy-piece/> (discussing the need for attorneys to establish value beyond the vast amount of substantive legal information available on the Internet).

³⁴¹ See generally Will Scott, *The Verdict is in: Internet Searches Gaining Traction in Legal Referrals*, SEARCH ENGINE LAND (Oct. 8, 2015), <http://searchengineland.com/verdict-internet-searches-gaining-traction-legal-referrals-230533> (“The typical consumer looking for an attorney online will generally first search the [I]nternet for specific legal information related to their case using search engines, law firm websites, online directories and social media.”).

³⁴² See CHRIS ANDERSON, *FREE: HOW TODAY'S SMARTEST BUSINESSES PROFIT BY GIVING SOMETHING FOR NOTHING* 14–33 (2010) (discussing the value of free services as a way to attract paying customers in the long term).

³⁴³ See MODEL RULES OF PROF'L CONDUCT r. 6.1 (AM. BAR ASS'N 2013).

traditional lawyer. The legal profession should not go the way of the steel industry, which ceded lower ends of the steel market to so-called “minimills” until those mills effectively displaced traditional mills from the entire market.³⁴⁴ The profession can strive to compete with non-legal services providers on their own turf, making the case for why customers should rely on those with the experience, expertise, and training to provide services that meet client needs.³⁴⁵ The legal profession can make up lower profit margins through the delivery of services in commoditized ways by serving a higher volume of clients.³⁴⁶

Such approaches start with empathy: an understanding on the part of the profession that clients have a need they want to fill and will likely seek to satisfy that need in the most efficient, cost-effective way possible.³⁴⁷ The legal profession needs to make the case that there are some circumstances in which a smaller-bore caliber of services will be adequate to meet client needs. When that is possible, the legal profession should meet those needs in that way, and should not try to convince the client that he or she needs a higher, more expensive level of service than that which would serve to meet the need adequately.³⁴⁸ By understanding the client perspective, and the alternative methods through which clients can meet their legal needs, the legal profession can adapt to this new environment, one in which clients have more options than they did before, options that are more affordable and accessible than those offered through traditional legal services providers. The lesson for the legal

³⁴⁴ See INNOVATOR’S DILEMMA, *supra* note 36, at 88.

³⁴⁵ See *id.* at 171 (discussing the importance of reliability of a product in competitive markets). At the same time, using anti-competitive strategies to stifle innovation is likely to be a losing proposition over the long run. See Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 *FORDHAM L. REV.* 2587, 2605–07 (2014) (providing an analysis of the viability and value of unauthorized-practice-of-law enforcement, which is the form such anti-competitive strategies would take and is taking); see also Gillian K. Hadfield & Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 *HASTINGS L.J.* 1191, 1203–23 (2016) (discussing the regulation of the profession and innovative forms of service delivery).

³⁴⁶ See INNOVATOR’S DILEMMA, *supra* note 36, at 89 (noting the success of the minimill industry in following this model); see also SUSSKIND, *supra* note 58, at 32 (discussing commoditization in the delivery of legal services); Brescia, *supra* note 94, at 211–19 (discussing commoditization in the delivery of legal services).

³⁴⁷ See PINK, *supra* note 7, at 165.

³⁴⁸ Recently, Washington State has created a new class of legal assistance providers, the Limited License Legal Technician, which are non-lawyers that can provide a range of services in a few specific areas of the law. See Stephen R. Crossland & Paula C. Littlewood, *The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession*, 65 *S.C. L. REV.* 611, 611–12, 622 (2014).

profession in this context is not to insist stubbornly that there is no substitute for a full-service lawyer in every situation, but rather, to empathize with the client and recognize that there may be circumstances where the traditional lawyer offers more services, and at greater expense, than what a client truly needs. Empathy will direct the legal profession to serve clients in ways that meet their needs in effective and efficient ways, even if that means lawyers will change the way they conduct their business in order to do so. Recent scholarship has explored the value of legal services in a range of contexts and it is to this research, and more like it, that the profession should turn to identify those situations in which a lawyer can make a critical difference in a client's case.³⁴⁹

Empathy will also come into play with the next aptitude, "design," where the legal profession should incorporate elements of design thinking to attract and retain its customer base.

B. Design

For Pink, incorporating design into the delivery of effective services means creating something beautiful or engaging.³⁵⁰ Now, it is hard to think of the delivery of legal services as beautiful, but the legal profession could utilize elements of design thinking to engage in meaningful ways with the public, whether that is through innovative web portals that help to assist customers find a lawyer and communicate effectively with him or her, or thinking about such portals creatively as ways to impart legal information and legal services in an effective and efficient way.³⁵¹ To do this, the legal profession will have to take into account the client's perspective and think about how to engage consumers in ways that are convenient for them, and which facilitate the delivery of legal services in an

³⁴⁹ A recent meta-study of this research summarizes much of the findings. See, Emily S. Taylor Poppe & Jeffrey J. Rachlinski, *Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes*, 43 PEPP. L. REV. 881, 886–933 (2016). Recent representative scholarship identifies critical questions with respect to the issue surrounding lawyer effectiveness. See, e.g., D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L. J. 2118, 2132 (2012); D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 925–36 (2013); Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact*, 80 AM. SOCIOLOGICAL REV. 909, 926 (2015); Jeffrey Selbin et al., *Service Delivery, Resource Allocation, and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 YALE L.J. ONLINE 45, 51–53 (2012).

³⁵⁰ See PINK, *supra* note 7, at 65.

³⁵¹ See, e.g., Hagan, *supra* note 285.

accessible format. Lawyers should strive to think about how to deliver services in ways to make them easy and convenient for the client to access. Indeed, disruptive companies like LegalZoom® have already begun to do this.³⁵² When a customer can access legal information and assistance over the Internet in an on-demand fashion or simply by making a phone call from his or her home or office, the thought of contacting a lawyer and hoping he or she will get back to the client, to make an appointment in the lawyer's office at a time that is convenient for the lawyer, is likely to deter many clients from turning to those lawyers. Instead, they will choose other service providers who are making it easy to contact them and receive assistance from them.³⁵³ Designing systems that look at the delivery of legal assistance from the client's perspective and make such services easy to access will give members of the legal profession a strategic advantage over their competitors who are failing to take into account the customer perspective in the marketing and delivery of services.³⁵⁴

Lawyers, working with computer programmers, marketing professionals, and even behavioral psychologists will also incorporate design thinking to create useful systems for the delivery of legal services where such services can be offered through a web-based portal that triages clients based on their needs and directs those clients to automated systems that can meet those needs in an adequate, comprehensive way.³⁵⁵ Such systems should identify when they can deliver automated, or mostly automated, services in an effective and efficient way that meets client needs. Those systems will also serve to direct clients whose needs cannot be met in a pre-packaged fashion, where the client needs more intensive, personalized services.³⁵⁶ Intuitive, responsive systems will adapt to

³⁵² See Felice, *supra* note 93, at 8.

³⁵³ See SUSSKIND, *supra* note 26, at 90.

³⁵⁴ See Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. ARK. LITTLE ROCK L. REV. 721, 729 (2015) (arguing that prospective clients want legal services that are targeted, timely, and trustworthy).

³⁵⁵ Of course, web-based access to legal assistance must include a society in which everyone can have meaningful access to the Internet. See COUNCIL OF ECON. ADVISERS, WHITE HOUSE, MAPPING THE DIGITAL DIVIDE 1 (2015), https://obamawhitehouse.archives.gov/sites/default/files/wh_digital_divide_issue_brief.pdf (providing an assessment of the present state of digital access).

³⁵⁶ A sort of triage already takes place in many legal contexts, not the least of which where legal services offices must decide who can receive their services and who they must reject for representation, even when a prospective client qualifies for services. See Paul R. Tremblay, *A "Very Moral Type of God": Triage among Poor Clients*, 67 FORDHAM L. REV. 2475, 2479–84 (1999) (providing a discussion of the challenges legal services providers face when making triage decisions about which cases to handle).

client needs, designed, in part, by lawyers, with the clients' needs and capacities in mind, with other professionals lending a hand in significant ways. Coordinating the work of these other professionals will require yet another Conceptual Age aptitude: "symphony."³⁵⁷

C. *Symphony*

Pink calls the act of coordinating different actors and resources, combined with an ability to see the "big picture" the aptitude *symphony*.³⁵⁸ A new approach to the delivery of legal services would take into account the needs of the consumer; communicate with him or her in an engaging, meaningful way; and marshal resources beyond the merely legal. It would work with other disciplines to address the client in a holistic way, not striving to meet all of his or her needs, but engaging with the legal needs in a new and interdisciplinary fashion, taking into account the full potential for legal services to engage the client to address the problems he or she faces in a more nuanced, multi-faceted way that gets beyond the more traditional silos of professions. Lawyers would work with individuals who can engage in computer programming and coding, can communicate effectively, can assess the policy implications of a client's planned course of conduct, and can understand a full spectrum of the client's interests. Just as the attorney is able to counsel a client beyond the black letter of the law,³⁵⁹ his or her assistance can go beyond the delivery of strictly legal services when broader interests are at stake and other disciplines can help comprehend, address, and solve the client's problem.

Of course, that is not to say that a lawyer's independent professional judgment should be beholden to the direction of other professionals or disciplines, because that would be unethical.³⁶⁰ Rather, the lawyer should strive to work with other disciplines to deliver better quality legal services: legal services that address the client's needs in a holistic way.

This *symphony*—this marshalling of resources and seeing the big picture—will require that lawyers learn how to work in interdisciplinary teams, something some lawyers do with some

³⁵⁷ See PINK, *supra* note 7, at 130.

³⁵⁸ See *id.*

³⁵⁹ See MODEL RULES OF PROF'L CONDUCT r. 2.1 (AM. BAR ASS'N 2014) ("In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.")

³⁶⁰ See *id.* r. 5.4 (limiting non-lawyer involvement in legal practice).

frequency, as in the case of government lawyers working in the environmental field, for example.³⁶¹ At present, however, it is likely that most lawyers do not take such interdisciplinary approaches to the delivery of legal services and are thus neglecting to see the forest for the trees, failing to recognize the nuances and multi-dimensional aspects of the client's problems.³⁶²

What role might other disciplines play in the delivery of legal services? Computer programmers and designers can create intuitive interfaces that deliver legal services in engaging, delightful, and even beautiful ways.³⁶³ Communications experts can help lawyers reach out to and market their services and information in effective ways, ways that similarly engage the customer meaningfully.³⁶⁴ Data scientists can help lawyers gather and use Big Data to help see the big picture: spotting patterns in their work; assessing judicial behavior; and marshalling publicly available information to help in legal and policy analysis related to trends in the behavior of clients, competitors, governments, etc.³⁶⁵ The list of potential interdisciplinary partners is, perhaps, limited only by the imagination.

D. Story

In addition to marshalling resources and seeing the big picture, one of the greatest strategic advantages over commoditized, and/or automated assistance, is that the attorney in the Conceptual Age can

³⁶¹ All lawyers end up working in teams, often interdisciplinary ones. See Brest, *supra* note 22, at 15 (noting that lawyers spend a significant amount of time collaborating with legal personnel and professionals in different fields); see also Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students' Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162, 1165 (2012) (discussing how to teach teamwork specifically in a large format class); Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36, 36 (2013) (discussing how to teach teamwork in law school).

³⁶² Interdisciplinary work is also essential to creativity, as divergent, multi-dimensional thinking is necessary to reach novel, innovative solutions. See HOWARD GARDNER, *INTELLIGENCE REFRAMED: MULTIPLE INTELLIGENCES FOR THE 21ST CENTURY* 44–66 (1999) (discussing the role of divergent thinking in creativity and problem solving).

³⁶³ See, e.g., *Professional Website Design for Attorneys*, STRATEGIC LEGAL WEB, <http://www.strategiclegalweb.com/professional-website-design.html> (last visited Oct. 25, 2016) (discussing ways to create visually appealing websites for attorneys).

³⁶⁴ See, e.g., *Internet Marketing for Attorneys and Law Firms*, STRATEGIC LEGAL WEB, <http://www.strategiclegalweb.com/attorney-practice-specific-marketing.html> (last visited Oct. 25, 2016) (discussing Internet marketing and search engine optimization for attorneys).

³⁶⁵ See Dan Steiner, *Data Analytics and Your Law Firm*, LAW TECH. TODAY (Apr. 28, 2016), <http://www.lawtechnologytoday.org/2016/04/big-data-law-firm-data-analytics-influencing-cases/>. Since such work facilitates effective representation, it is akin to a lawyer working with a paralegal or a translator, and there is no fear that lawyers are sharing fees with non-lawyers. See MODEL RULES OF PROF'L CONDUCT r. 5.4 (AM. BAR ASS'N 2014).

adopt effective storytelling in ways that can persuade, engage, communicate, and advocate.³⁶⁶

In a story, a challenge presents itself to the protagonist who then has a choice, and an outcome occurs. The outcome [communicates] . . . a moral, but because the protagonist is a humanlike character, we are able to identify empathetically, and therefore we are able to feel, not just understand, what is going on.³⁶⁷

Robots cannot tell stories. As we move into a world where more and more services are being provided in commoditized, automated ways,³⁶⁸ lawyers can craft personalized stories: stories that evoke images to make clients more sympathetic, that sway juries and judges, and that communicate in the world of public opinion. Situations in which the lawyer as storyteller is a powerful force will remain as those in which traditional lawyering will have a considerable strategic advantage over new entrants into the legal services market.³⁶⁹ Traditional lawyers should seek out ways to take advantage of digital tools, like Big Data, machine learning, and data mining, to help explore, discover, and craft compelling stories, but one of the areas in which the human brain excels over artificial intelligence is in creating metaphors, drawing in seemingly unconnected ideas and concepts, and crafting them into persuasive, effective narratives. It is hard to think of any computer, even the most powerful, crafting stories that persuade, no matter how simple: “If it doesn’t fit, you must acquit.”³⁷⁰

E. Play

Similarly, lawyers can also think of ways to incorporate playfulness and whimsy into the delivery of legal services. With the help of computer programmers, lawyers can incorporate principles of game

³⁶⁶ See Jonathan K. Van Patten, *Storytelling for Lawyers*, 57 S.D. L. REV. 239, 276 (2012).

³⁶⁷ Marshall Ganz, *Why Stories Matter: The Art and Craft of Social Change*, SOJOURNERS, Mar. 2009, at 19.

³⁶⁸ See George Zarkadakis et al., *The 3 Ways Work Can Be Automated*, HARV. BUS. REV. (Oct. 13, 2016), <https://hbr.org/2016/10/the-3-ways-work-can-be-automated>.

³⁶⁹ See, e.g., Dana K. Cole, *Psychodrama and the Training of Trial Lawyers: Finding the Story*, 21 N. ILL. U. L. REV. 1, 2, 39 (2001) (discussing how the best trial lawyers succeed through persuasive story telling).

³⁷⁰ See Van Patten, *supra* note 366, at 241 (discussing the role of storytelling in legal advocacy in general); see also Leonard M. Baynes, *A Time to Kill, The O.J. Simpson Trials, and Storytelling to Juries*, 17 LOY. L.A. ENT. L.J. 549, 549 (1997) (“In presenting a case to a jury, a lawyer needs to think about linking all the evidence together to present a credible story that the jury will believe.”) (discussing storytelling in the O.J. Simpson trial specifically).

design into online interfaces that can teach clients and the broader community about their rights.³⁷¹ Organizations like the Opportunity Agenda have designed communications strategies to help educate the public about human and civil rights, invoking a “social justice superhero” named “Helvetika Bold”: a comic book character who explores compelling narratives around combatting different forms of social inequality.³⁷² Using a lighthearted, playful approach, the advocates at the Opportunity Agenda developed a toolkit for advocates to help them develop a communications strategy around inequality that arms them with effective narratives that they can use in their campaigns.³⁷³ The legal profession, long a staid and stuffy profession, can certainly try to develop playful ways to attract clients, engage them in effective ways, communicate critical information, and provide meaningful assistance while utilizing strategies that are lighthearted, humorous, and enable lawyers to interact with clients and potential customers in ways that captivate the imagination. Just one example of this potential is that creative and whimsical legal entrepreneurs have made on-demand legal services a reality on a mobile-based platform, designed even for access on the side of the road in the event of, say, a traffic stop. Its name? The “Oh Crap App.”³⁷⁴

F. Meaning

Finally, even when using stories and humor to engage clients and potential clients, lawyers seeking to compete with commoditized and/or automated legal services should attempt to identify ways that the legal profession assists client in addressing non-material needs. When clients pursue something as straightforward as an acquittal or a mortgage, there are clear functional needs that the lawyer can help the client meet.³⁷⁵ At the same time, in many instances in which a client retains a lawyer, there are other, less instrumental values the client is pursuing, sometimes consciously, sometimes unconsciously: peace of mind; the value of living in a functioning participatory democracy; the defense of important individual rights. These

³⁷¹ See Stephanie Kimbro, *What We Know and Need to Know about Gamification and Online Engagement*, 67 S.C. L. REV. 345, 346 (2016) (discussing “gamification” in legal services design).

³⁷² See *Who is Helvetika Bold?*, OPPORTUNITY AGENDA, <http://toolkit.opportunityagenda.org/> (last visited Oct. 27, 2016).

³⁷³ See *id.*

³⁷⁴ See OH CRAP! APP, <http://oh-crap-app.com/> (last visited Feb. 17, 2017).

³⁷⁵ See Brescia, *supra* note 94, at 213 (describing one instance in which clients have straightforward needs, which may be met by commoditized services).

interests often animate a client's desires when he or she pursues a legal claim.³⁷⁶ Depending on the interest at stake, there are certainly instances where commoditized services can address both the instrumental as well as the non-instrumental values a client wishes to pursue.³⁷⁷ The preparation of a form creating a living will, or a corporate form, in addition to creating legal interests and rights, may also give the client repose.³⁷⁸ Thus, there are instances where commoditized services likely are sufficient to address the full range of client interests and values that are at stake in the search for legal assistance.

At the same time, commoditized services are such that they cannot always satisfy the non-material and/or political values at stake in a given situation, like facilitating the effective functioning of an administrative agency when clients may wish to engage in the rulemaking process in a meaningful way or to lobby for legislative changes to laws that affect their lives.³⁷⁹ In these instances, where the democratic values inherent in the participatory process are at stake, commoditized, one-size-fits-many services are unlikely to deliver in ways that satisfy the non-instrumental values the legal profession can promote.³⁸⁰

There is a difference between the functional/instrumental role the attorney can fill and the non-material values he or she addresses in the delivery of legal services.³⁸¹ Identifying the latter will help the legal profession to understand the places where more traditional legal services are better suited to address the full range of client needs. This will require not just an appreciation for the formal, legal needs of the client, but also the other types of value the lawyer brings to the client, the other needs the lawyer satisfies. The legal

³⁷⁶ See, e.g., *id.* at 215–16 (acknowledging various examples of individual rights in the context of one-size-fits-all services); see also Laura M. Krohn, *The Holistic Lawyer*, 61 R.I. BAR J. 31, 31, 32 (2012) (noting that many clients are not as focused on legal rights as they are their emotions and goals for peace of mind).

³⁷⁷ See Brescia, *supra* note 94, at 214.

³⁷⁸ See, e.g., *id.* at 213 (referencing living wills as one such specific opportunity that commoditized services can serve client needs).

³⁷⁹ See *id.* at 215–16; Chris Micheli & Jennifer Barrera, *Helping Your Client's Legal Problem by Changing the Law: Insights into State Government Lobbying for Lawyers*, MCGEORGE SCH. L. (May 29, 2016), http://www.mcgeorge.edu/News/Change_the_Law.htm.

³⁸⁰ It is noteworthy that one of the ways this issue can play out is in calls for reform of legal education that do not attempt to address the underlying inequalities inherent in a system that denies fundamental rights and access to justice to too many Americans. See Ashar, *supra* note 87, at 216–30 (providing this critique of legal education reforms).

³⁸¹ See Brescia et al., *Embracing Disruption*, *supra* note 334, at 555 (emphasizing that commoditized legal services may improve access to justice, a non-material value that accompanies the practical, functional needs that a lawyer serves in representation).

profession must embrace the notion that clients should have their formal legal needs satisfied in an efficient and effective way when that is all particular clients may want. In such instances, this may mean those services will be delivered in a commoditized fashion. In others, when there is other value that the lawyer brings to the relationship beyond addressing relatively straightforward legal problems, those services the lawyer will deliver in a more customized manner, one that addresses other, non-material needs and delivers non-material rewards.

Any discussion of the proper role for the legal profession in the satisfaction of material and non-material needs is always held against the backdrop of both abundance (the range of service options now available to clients) and scarcity (the fact that too many clients still cannot afford legal services). The profession faces new threats, including the advent of technology that is creating a greater range of opportunities for clients to attempt to address their legal needs, with some approaches satisfying the full range of client needs in a particular setting, and others not able to meet all of those needs: that is, functional as well as non-material interests.

With cost-conscious clients and more options available to those clients to address their legal needs in more affordable ways, the legal services industry faces “the innovator’s dilemma”: the competition to incumbent actors within the industry from new entrants that are offering services that meet client needs in more affordable ways, and may come closer, in some situations, to addressing those needs adequately, through the provision of competent, effective services that are sufficient to meet the particular need in a particular situation.³⁸² The legal profession must come to terms with the fact that the disruption in the industry will likely require either that lawyers change how they do business, adapting to the new landscape and the modes and means of delivering services in effective ways, or hewing to well-worn paths and approaches, disregarding the coming threats to their professional viability. The bottom line is, lawyers can continue to compete for the same clients—those who can afford the lawyers’ services—but face the fact that sooner or later, new entrants will be able to address the legal needs of even that sliver of the market as those new entrants experiment with new and better ways

³⁸² See INNOVATOR’S DILEMMA, *supra* note 36, at xiii–xiv.

to deliver services.³⁸³

There is another approach, however. First, the legal profession can, at a minimum, learn the new technologies that are enhancing the ability to deliver legal services in new and innovative ways and craft competing alternatives for some clients to stick with traditional legal services providers, albeit ones that are delivering legal services in creative ways. Second, the legal profession can make the case for the non-instrumental values that the profession serves. It can then identify, in a candid and clear-eyed way, the reasons why commoditized, automated, disruptive approaches cannot truly serve those values. It would articulate those reasons in creative ways, ways that are designed to assist clients in determining when their full range of needs can be met adequately by non-traditional providers and when a traditional provider of legal services is the best fit for the job.

I submit that the effective application of the aptitudes of the Conceptual Age is one way to work through this thicket—to both explain the present disruption unfolding in the legal services industry as well as offer the tools the legal profession needs to navigate it effectively: to embrace disruption where appropriate, yet offer a clear case for where traditional lawyering—even where enhanced by technology—is the best fit for a client in a particular situation. As Pink suggests, the legal industry, in the face of this disruption, must learn to articulate how it can deliver more effective services in an affordable and efficient way, while addressing clients' non-material ends.³⁸⁴ By tapping into the aptitudes of design, empathy, story, symphony, play, and meaning, a more robust, empathetic, and client-centered legal profession—one that appreciates the role of interdisciplinarity, play, and meaning—would emerge. This new legal profession would address the whole range of client needs and communicates—and delivers on—a new set of values.³⁸⁵

³⁸³ See Luban, *supra* note 329, at 499, 500.

³⁸⁴ See PINK, *supra* note 7, at 46–47.

³⁸⁵ By no means am I suggesting that in every problem-solving setting and for every client an attorney must deploy all of Pink's aptitudes to solve the problem presented to serve the client well. Indeed, as stated previously, these aptitudes are heuristics or even metaphors. Perhaps they can help identify new, effective approaches for meeting client needs in an era of both scarcity and abundance. As we enter a new, technology-enabled, commoditized, and globalized legal profession, further research is certainly needed to explore the ways that these aptitudes can help lawyers provide value, meet client needs, and serve the broader society in effective ways.

V. PREPARING LAW STUDENTS FOR THE CONCEPTUAL AGE

In order for the legal profession to adapt to the Conceptual Age, law schools will need to educate law students for the “new normal” created by the various threats to incumbents in the legal services industry described above.³⁸⁶ In their recent work,³⁸⁷ Michele Pistone, a law professor at the cutting edge of the intersection of legal teaching and technology, and Michael Horn, a co-founder of the Christensen Institute for Disruptive Innovation, posit that the threats the legal profession, and, in turn, law schools face can be addressed in two ways: first, by preparing current students better for the practice of law through a competencies-based curriculum founded on formative assessment; and, second, by expanding the market for the product law schools offer by the introduction of non-juris doctor degrees, like masters degrees and certificates, delivered through hybrid classes that blend online and traditional learning techniques.³⁸⁸ While these suggestions are important for law schools to consider and adopt if they are to compete in a market where fewer prospective students have opted for the traditional three-year law degree in recent years,³⁸⁹ their ideas for improving education for those traditional students fail to address the fact that the very industry for which law schools are training their students is changing dramatically, as technology is both disrupting the delivery of legal services, expanding access, making it more affordable, and favoring those who are able to master the new tools and techniques technology makes available.³⁹⁰

What is more, preparing students for traditional practice in such a way that replicates the status quo is a recipe for failure and greater inequality and would make social justice harder to achieve.³⁹¹

³⁸⁶ Of course, the legal education industry is not devoid of challenges, disruption, and threats, and a body of scholarship provides some critiques of the present, and evolving, state of legal education, with varied suggestions for reform. *See, e.g.*, STUCKEY ET AL., *supra* note 207; WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 8–10 (2007); TAMANAHA, *supra* note 87, at 167–85; Henderson, *supra* note 87, at 490–507; *see also* Philip G. Schrag, *Failing Law Schools—Brian Tamanaha’s Misguided Missile*, 26 GEO. J. LEGAL ETHICS 387, 407–14 (2013) (critiquing Tamanaha).

³⁸⁷ MICHELE R. PISTONE & MICHAEL B. HORN, DISRUPTING LAW SCHOOL: HOW DISRUPTIVE INNOVATION WILL REVOLUTIONIZE THE LEGAL WORLD (2016).

³⁸⁸ *See id.* at 16, 21.

³⁸⁹ *See* Bonny L. Tavares & Rebecca L. Scalo, *Teaching After Dark: Part-Time Evening Students and the First-Year Legal Research & Writing Classroom*, 17 LEGAL WRITING 65, 67–68 (2011) (noting the decline in traditional legal education and predicting a rise in part-time legal education).

³⁹⁰ *See* PISTONE & HORN, *supra* note 387, at 6.

³⁹¹ *See id.* at 12; *see also* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION

Indeed, replicating the status quo and preparing students to practice in traditional ways, when demand from those who can pay for such services is dwindling, will only serve to further cement the distortions in the market created by the fact that access to justice is greatly limited to those who can afford legal services.³⁹² Such replication will mean that economic, social, and racial inequality will only continue, if not expand, as the “haves” continue to enjoy access to justice while a great percentage of the American population does not.³⁹³ Educating for the status quo will only reproduce the status quo; it will likely make matters worse as fewer students enroll in law schools, limiting, even further, the supply of lawyers able to satisfy issues of access, while making traditional services even less affordable as we see a reduction in the general supply of lawyers.³⁹⁴ This vicious cycle will only exacerbate the current crisis, not alleviate it.³⁹⁵

A legal education in the twenty-first century should not just prepare law students to practice law in the present environment, it must prepare them to work with technology in creative ways that helps those students practice in the rapidly changing market for legal services. This will require them to *embrace* technology as a means of delivering legal services in a competent and efficient way, *compete* with non-traditional providers, and *distinguish* themselves from non-traditional providers by offering a superior product that satisfies clients’ instrumental as well as non-material needs.

In an era of both abundance (in options) and scarcity (where the cost of legal services places them out of reach of many consumers), the most successful practitioners in the evolving legal profession will

FOR THE PROFESSION OF LAW 6 (2007) (“In their all-consuming first year [of law school], students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analysis.”).

³⁹² See PISTONE & HORN, *supra* note 387, at 12–13 (noting that in general, clients are no longer willing to pay full price for new law associates who are learning on the job, yet law schools continue to be resistant to substantial change in their teaching model).

³⁹³ See Dan Lear, *Lawyers Need to Move Beyond ‘Access to Justice’ to Close the Legal Services Gap*, A.B.A. J.: LEGAL REBELS (Sept. 1, 2015), http://www.abajournal.com/legalrebels/article/lawyers_need_to_move_beyond_access_to_justice_to_close_the_legal_services_g/.

³⁹⁴ See STUCKEY ET AL., *supra* note 207, at 283, 285; Bernard A. Burk, *What’s New about the New Normal: The Evolving Market for New Lawyers in the 21st Century*, 41 FLA. ST. U. L. REV. 541, 599–601 (2014). Currently, the “paradox” of a present “oversupply” of lawyers and a wide justice gap exists. See Emily A. Spieler, *The Paradox of Access to Civil Justice: The “Glut” of New Lawyers and the Persistence of Unmet Need*, 44 U. TOL. L. REV. 365, 368–89 (2013).

³⁹⁵ Pistone and Horn are not alone in arguing that students should be practice-ready for the needs of current employers; indeed, many have stuck to this point in their calls for reform of legal education. See, e.g., STUCKEY ET AL., *supra* note 207, at 1; SULLIVAN ET AL., *supra* note 391, at 4, 6, 11; Henderson, *supra* note 87, at 462; see also Ashar, *supra* note 87, at 206 (discussing a response to the critics, one that challenges law schools to engage in their own critique of the status quo and not replicate it).

learn to serve what Richard Susskind calls the “latent legal market”: that portion of the potential customer base for whom legal services are unaffordable or inaccessible.³⁹⁶ In order to do that, practitioners should understand how they deliver a superior product that is more attuned to serving clients’ instrumental and non-material needs. This will require that the lawyer empathize with clients, understand what needs they are trying to meet in particular situations, and work with clients to meet those needs. Lawyers will need to design the delivery of their legal services in light of those needs, marshalling resources and seeing the client, and the client’s problem, in a holistic fashion, recruiting interdisciplinary support where necessary to meet those needs. It will require that lawyers craft compelling narratives that convey critical information in engaging and persuasive ways and incorporate a degree of lightheartedness when appropriate. They will tap into deeper truths about their clients’ conditions and understand the non-material benefits of creative problem solving. In short, tomorrow’s lawyers will need to incorporate into their work so-called R-Directed thinking and the six aptitudes of the Conceptual Age as identified by Pink.³⁹⁷

What relationship, if any, do these aptitudes have to Shultz and Zedeck’s effective lawyering factors described above?³⁹⁸ It turns out, many of these factors are consistent with Pink’s aptitudes, including the following: problem solving, creativity/innovation, strategic planning, listening, the ability to see the world through the eyes of others, building relationships, organizing and managing others, and passion and engagement.³⁹⁹ Thus, if Shultz and Zedeck are correct in their analysis of the skills lawyers need to be effective, the aptitudes can fall within those skills at the same time that they are calibrated with the needs of the Conceptual Age.⁴⁰⁰ If this is the case, how can law schools, which are designed with so-called L-Directed thinking in mind in many respects,⁴⁰¹ teach these R-Directed skills?

Problem-solving courses, like the course described here, as well as many experiential opportunities available in many schools, offer students opportunities to engage with real-world problems,

³⁹⁶ See SUSSKIND, *supra* note 58, at 18; see also *supra* Part II(B) (explaining the abundance and scarcity of legal services and consumers).

³⁹⁷ See PINK, *supra* note 7, at 65–67.

³⁹⁸ See SHULTZ & ZEDECK, *supra* note 192, at 24, 26–27.

³⁹⁹ See *id.* at 26–27.

⁴⁰⁰ Compare *id.* (listing Shultz and Zedeck’s effective lawyering factors), with PINK, *supra* note 7, at 65–67 (discussing Pink’s six aptitudes of the Conceptual Age).

⁴⁰¹ See Paula Franzese, *Law Teaching for the Conceptual Age*, 44 SETON HALL L. REV. 967, 971 (2014).

empathize with individuals grappling with such problems and see such problems through those individuals' eyes. Through these channels, students can design elegant solutions to those problems, craft compelling narratives around those solutions, and address the community's material and non-material needs.⁴⁰² But the aptitudes are not reserved for such experiential settings, like the problem-solving course or the clinical offering.⁴⁰³ Seton Hall Law School's Paula Franzese describes the ways in which she incorporates R-Directed components into her traditional, large-format, doctrinal classes, offering students the chance to develop and exercise their ability to engage in empathy, design, story, symphony, play, and meaning.⁴⁰⁴ The needs of clients today are complex and multifaceted.⁴⁰⁵ As Paul Brest explained two decades ago, which still holds true today: such needs require "multifaceted problem-solving and decision-making skills, which in turn require a multifaceted approach to teaching."⁴⁰⁶ The opportunities for teaching students how to learn and practice the R-Directed aptitudes are out there, and they may turn out to be critical tools in the toolbox of tomorrow's lawyer, as she faces an uncertain and evolving world.

CONCLUSION

Whether we are truly in a Conceptual Age, or whether the legal profession is in the midst of a disruption, tomorrow's lawyers will have to do something that overseas workers cannot do cheaper, that computers cannot do faster, and that satisfies non-material desires of clients and communities. The aptitudes of the Conceptual Age as identified by Pink—empathy, design, story, symphony, play, and meaning—are tools that lawyers can deploy in this new, emerging, and evolving environment.⁴⁰⁷ In order to educate future lawyers for this new environment, law schools can strive to incorporate these

⁴⁰² See, e.g., Vinson, *supra* note 108, at 794–95. As Menkel-Meadow argues, this new era calls for, among other things, making the teaching of decision making, problem solving, and the exercise of judgment more "explicit" in the law school curriculum. See Menkel-Meadow, *supra* note 220, at 154–55.

⁴⁰³ See, e.g., Franzese, *supra* note 401, at 995.

⁴⁰⁴ See *id.* at 995–1013.

⁴⁰⁵ See Michele DeStefano, *The Legal Profession's Monopoly on the Practice of Law: Compliance and Claim Funding: Testing the Borders of Lawyers' Monopoly and the Unauthorized Practice of Law*, 82 *FORDHAM L. REV.* 2961, 2963, 2969 (2014); Pro Bono Legal Services, *Recommendation of the Minnesota Legal Services Planning Commission on the Configuration of LSC-Funded Programs*, 26 *HAMLIN J. PUB. L. & POL'Y* 265, 282 (2005).

⁴⁰⁶ Brest, *supra* note 22, at 9.

⁴⁰⁷ See PINK, *supra* note 7, at 65–67; see also Franzese, *supra* note 401, at 995 (explaining how the aptitudes identified by Pink can be used to teach lawyers today).

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aptitudes into the courses, projects, clinical programs, externships, and other educational opportunities they offer their students. This article explores one way in which law schools can attempt to do so. I invite more, and also the discussion that I hope such efforts will spark about educating lawyers in the twenty-first century.